



**Fwd: Revised AOC**  
**Kevin Murray** to: Matthew Cohn, Mia Bearley  
Cc: "Kerry C. Gee", "David J. Smith"

02/01/2011 11:55 AM

From: Kevin Murray <kmurray@chapman.com>  
To: Matthew Cohn/R8/USEPA/US@EPA, Mia Bearley/R8/USEPA/US@EPA  
Cc: "Kerry C. Gee" <kcggee@unitedpark.com>, "David J. Smith" <dsmith@taliskermountain.com>

3 attachments



2944319.02.05.doc



2944319.02.05.D.doc



EPA insert.doc

Matt

Attached please find our proposed wavier language for paragraphs 4, 5, 49 and 82. I have also included a clean and redline of our proposed changes to the draft AOC. Due to the time constraints we have not had an opportunity to thoroughly review the AOC or our proposed changes and therefore may yet make additional changes, modifications or clarifications in the document.

regards,  
Kevin

Kevin R. Murray  
Chapman and Cutler LLP  
Salt Lake City Direct 801-320-6754  
Chicago Direct 312-917-7654  
Mobile 801-209-9255  
[kmurray@chapman.com](mailto:kmurray@chapman.com)

Revised AOC (clean and redlined)  
Waiver paragraphs

4. The Parties recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Furthermore, Respondents do not admit any responsibility or liability for environmental or contaminant issues at the Site, or within either the Silver Creek watershed or the East Canyon Creek watershed. Any studies, evaluations, determinations, data and sample gathering, removal actions, funding or other activities performed pursuant to or in connection with this Settlement Agreement, and the results of all such activities, are exclusively for settlement purposes and shall not be used for any other purpose whatsoever (whether in relation to the Site or otherwise), nor shall they be given any operative, substantive, circumstantial or actual significance, deference, weight or inference in any proceeding, action, undertaking, procedure or process, whether formal, informal, administrative, municipal, judicial, or otherwise (whether in relation to the Site or otherwise). Nothing in this Agreement may be used as evidence or support, whether direct, indirect, circumstantial or actual, for any claims, causes of action, proceedings or undertakings, whether judicial, administrative, municipal, or otherwise. Respondents do not admit, and retain the right to controvert in any subsequent actions, undertakings or proceedings, whether formal, informal, administrative, municipal, judicial or otherwise, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections V and VI of this Settlement Agreement. Respondents United Park and Park City agree not to assert any claims for liability, or otherwise, against each other based on any provision of this Agreement, or the performance of any studies, evaluations, determinations, data gathering, removal actions, funding or other activities performed pursuant to or in relation to, this Settlement Agreement. The Parties agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

5. [The parties/Respondent Park City] acknowledges and agrees that respondent UPCM has no liability or responsibility for water, water treatment or water quality at the Site or within either the Silver Creek watershed or the East Canyon Creek watershed, or anywhere tributary to the foregoing, including, by way of example and not by way of limitation, Empire Canyon, Empire Creek, Thayne's Canyon Creek, Judge Tunnel, Spiro Tunnel, and Prospector Drain.

49. No data, information, samples or materials generated during the course of or in relation to the response actions performed pursuant to this Settlement Agreement shall be used by any Party for any purpose whatsoever, including any adversary proceeding, action, process, procedure or undertaking, whether formal, informal, administrative, municipal, judicial, or otherwise (whether in relation to the Site or otherwise), other than a proceeding to enforce the terms of this Settlement Agreement or a proceeding for injunctive relief for this Site pursuant to CERCLA Section 106. Respondents agree that they shall not use or attempt to use any data, information, samples or other materials generated or discovered pursuant to or in relation to this Settlement Agreement, or as a result of or in connection with any of the activities contemplated hereunder, to make any allegations or inferences involving, or to assert any claims against each other for, liability for environmental or contaminant issues at the Site or within either the Silver Creek watershed or the East Canyon Creek watershed. This prohibition shall include, by way of example and not by way of limitation, actions filed in a court of law, administrative or municipal undertakings or actions, representations made to federal, state or local government authorities, and statements made to the media or members of the general public.

82. Respondents agree that they will not assert any claims and will waive all claims or causes of action that they may have against each other or against the Utah Division of Parks and Recreation relating to or stemming from releases of hazardous substances or discharges of pollutants from Prospector Square and OU#3. Respondents agree that they shall not make any allegations or assert any claims against each other for liability for environmental or contaminant issues at the Site or within either the Silver Creek watershed or the East Canyon Creek watershed, or anywhere tributary to the foregoing, including, by way of example and not by way of limitation, Empire Canyon, Empire Creek, Thayne's Canyon Creek, Judge Tunnel, Spiro Tunnel, and Prospector Drain. This prohibition shall include, by way of example and not by way of limitation, actions filed in a court of law, administrative or municipal undertakings or actions, representations made to federal, state or local government authorities, and statements made to the media or members of the general public.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
AND  
UNITED STATES BUREAU OF LAND MANAGEMENT**

IN THE MATTER OF:	)	ADMINISTRATIVE SETTLEMENT
	)	AGREEMENT AND ORDER ON
Richardson Flat Tailings Site	)	CONSENT FOR EE/CA INVESTIGATION
Operable Unit #3	)	AND REMOVAL ACTION
Park City, Utah	)	
	)	
Park City Municipal Corporation and	)	
United Park City Mines Company,	)	
	)	
Respondents	)	
	)	
Proceeding Under Sections 104, 106(a),	)	U.S. EPA Region VIII
107 and 122 of the Comprehensive	)	CERCLA Docket No. _____
Environmental Response, Compensation,	)	
and Liability Act, as amended,	)	
42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	)	
_____	)	



## TABLE OF CONTENTS

SECTION	HEADING	PAGE
SECTION I	JURISDICTION AND GENERAL PROVISIONS .....	1
SECTION II	PARTIES BOUND.....	2
SECTION III	STATEMENT OF PURPOSE .....	3
SECTION IV	DEFINITIONS .....	3
SECTION V	FINDINGS OF FACT .....	7
SECTION VI	CONCLUSIONS OF LAW AND DETERMINATIONS .....	10
SECTION VII	SETTLEMENT AGREEMENT AND ORDER .....	12
SECTION VIII	DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR .....	12
SECTION IX	EE/CA WORK TO BE PERFORMED .....	16
SECTION X	PERFORMANCE OF REMOVAL.....	18
SECTION XI	SITE ACCESS AND INSTITUTIONAL CONTROLS .....	22
SECTION XII	EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS.....	26
SECTION XIII	ACCESS TO INFORMATION.....	28
SECTION XIV	RECORD RETENTION .....	30
SECTION XV	COMPLIANCE WITH OTHER LAWS .....	30
SECTION XVI	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES .....	31
SECTION XVII	PAYMENT OF RESPONSE COSTS.....	31
SECTION XVIII	DISPUTE RESOLUTION.....	33
SECTION XIX	FORCE MAJEURE.....	35
SECTION XX	STIPULATED PENALTIES.....	36
SECTION XXI	COVENANT NOT TO SUE BY EPA AND BLM.....	40

SECTION XXII	RESERVATIONS OF RIGHTS BY EPA.....	40
SECTION XXIII	COVENANT NOT TO SUE BY RESPONDENTS.....	42
SECTION XXIV	OTHER CLAIMS .....	42
SECTION XXV	CONTRIBUTION .....	43
SECTION XXVI	INDEMNIFICATION.....	44
SECTION XXVII	INSURANCE .....	44
SECTION XXVIII	FINANCIAL ASSURANCE.....	45
SECTION XXIX	MODIFICATIONS.....	46
SECTION XXX	ADDITIONAL REMOVAL ACTION.....	47
SECTION XXXI	NOTICE OF COMPLETION OF WORK.....	47
SECTION XXXIII	ADMINISTRATIVE RECORD.....	47
SECTION XXXIV	INTEGRATION/APPENDICES.....	48
SECTION XXXV	EFFECTIVE DATE .....	48

## SECTION I

### JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("*Settlement Agreement*") is entered into voluntarily by Park City Municipal Corporation and United Park City Mines Company ("*Respondents*") and the United States Environmental Protection Agency ("*EPA*"), the Bureau of Land Management ("*BLM*"), and the State of Utah (collectively, the "*Parties*"). This Settlement Agreement provides for the preparation and performance of an Engineering Evaluation/Cost Analysis ("*EE/CA*") and non-time critical removal action ("*removal action*") by each of the Respondents at or in connection with the Richardson Flat Tailings Site, Operable Units #3 and #4, generally located near Park City, Utah (the "*Site*"), depicted generally in blue on the map attached as Appendix A and generally described as the Middle Reach of Silver Creek, three parcels in Lower Silver Creek (OU 2) north of the Promontory Road in the southeast quarter of section 15 and the southwest quarter of section 14 township 1 south range 4 east SLB&M and two parcels of land in the northwest quarter of section 26 township 1 south range 4 east SLB & M, and the reimbursement of interim and future response costs incurred by EPA in connection with the EE/CA and removal action.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("*CERCLA*"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 8 to the Assistant Regional Administrator, Office of Ecosystem Protection and Remediation by EPA Delegation No. 14-14-C. **DOI delegation language?**

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), on September 28, 2010, EPA formally notified the United States Department of the Interior and the Utah Department of Environmental Quality of the release of hazardous substances that may have resulted in injury to the natural resources under Federal and State trusteeship at Operable Units #3 and #4 of the Richardson Flat Tailings Site and of negotiations with potentially responsible parties.

4. The Parties recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Furthermore, Respondents do not admit any responsibility or liability for environmental or contaminant issues at the Site, or within either the Silver Creek watershed or the East Canyon Creek watershed. Any studies evaluations, determinations, data and sample gathering, removal actions, funding or other activities performed pursuant to or in connection with this Settlement Agreement, and the results of all such activities, are exclusively for settlement purposes and shall not be used for any other purpose whatsoever (whether in relation to the Site or otherwise), nor shall they be given any operative, substantive, circumstantial or actual significance, deference, weight or inference in

any proceeding, action, undertaking, procedure or process, whether formal, informal, administrative, municipal, judicial, or otherwise (whether in relation to the Site or otherwise). Nothing in this Agreement may be used as evidence or support, whether direct, indirect, circumstantial or actual, for any claims, causes of action, proceedings or undertakings, whether judicial, administrative, municipal or otherwise. Respondents do not admit, and retain the right to controvert in any subsequent actions, undertakings or proceedings, whether formal, informal, administrative, municipal, judicial or otherwise, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections V and VI of this Settlement Agreement. Respondents agree not to assert any claims for liability, or otherwise, against each other based on any provision of this Agreement, or the performance of any studies, evaluations, determinations, data gathering, removal actions, funding or other activities performed pursuant to or in relation to, this Settlement Agreement. The Parties agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

5. The Parties/Respondent Park City] acknowledges and agrees that Respondent UPCM has no liability or responsibility for water, water treatment or water quality at the Site or within either the Silver Creek watershed or the East Canyon Creek watershed, or anywhere tributary to the foregoing, including, by way of example and not by way of limitation, Empire Canyon, Empire Creek, Thaynes Canyon Creek, Judge Tunnel, Spiro Tunnel, and Prospector Drain.

## **SECTION II**

### **PARTIES BOUND**

5. This Settlement Agreement applies to and is binding upon the Parties and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Each Respondent shall be responsible for any noncompliance with requirements of this Settlement Agreement for which it is either individually or jointly responsible.

8. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the Parties to this Settlement Agreement.

### SECTION III

#### STATEMENT OF PURPOSE

9. In entering into this Settlement Agreement, the objectives of the Parties are: (a) to determine the source, nature and extent of contamination and contaminant transport mechanisms and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from each operable unit that comprises the Site, by conducting an Engineering Analysis as more specifically set forth in the EE/CA Work Plan that is specific to each operable unit attached as Appendix B and B1 to this Settlement Agreement; (b) to identify and evaluate alternatives to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a Cost Analysis specific to each operable unit as more specifically set forth in the EE/CA Work Plans attached as Appendix B and B1 to this Settlement Agreement; (c) to conduct all actions necessary to implement the non-time critical removal action remedy selected in EPA's Action Memorandum for each operable unit, as to be set forth in a removal action Statement of Work and Work Plan specific to each operable unit of the site; and (d) to recover interim and future response and oversight costs incurred by EPA with respect to this Settlement Agreement.

10. The Work conducted under this Settlement Agreement is subject to approval by EPA and, with respect to the Silver Maple Claims portion of the Site, the concurrence of BLM, and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondents shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidance, policy, and procedure.

### SECTION IV

#### DEFINITIONS

11. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

(a) "*Action Memorandum*" shall mean the EPA Site Action Memorandum that will be issued by EPA, with the concurrence of BLM as it relates to the Silver Maple Claims portion of the Site, at the conclusion of the EE/CA for each operable unit.

(a1) "*Asarco Funds*" shall mean any funds obtained through the Asarco bankruptcy that represent Asarco's contribution for their past operations in OU 2 and OU 3.

(b) "*BLM*" shall mean the United States Bureau of Land Management and any successor departments or agencies of the United States.

(b) "*CERCLA*" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

(c) "*Day*" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

(d) "*Development Waste*" shall mean all contaminated soils that PCMC seeks to dispose of, but which do not arise from the Richardson Flat Superfund Site, OUs 1-4.[needs work]

(e) "*Effective Date*" shall be the effective date of this Settlement Agreement as provided in Section XXXV.

(f) "*EPA*" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

(g) "*Future Response Costs*" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry ("*ATSDR*") costs, the costs incurred pursuant to Paragraph 34 (costs and attorneys' fees and any monies paid to secure access, including the amount of just compensation), Paragraph 53 (emergency response), and Paragraph 79 (work takeover).

(h) "*Institutional Controls*" shall mean proprietary controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for exposure to Waste Materials at the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the removal action; and/or (c) provide information intended to modify or guide human behavior at the Site.

(i) "*Interest*" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

(j) "*Interim Response Costs*" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between [insert

**date identified in Past Response Costs definition]** and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

(k) "*Prospector Square*" shall mean that area identified by EPA and the State of Utah as a point source pursuant to the Clean Water Act, depicted generally on the map attached as Appendix C, and that has caused, or has the potential to, cause, hazardous substances to become located at the Site.

(k) "*Material Defect*" shall mean [need to fill in].

(l) "*Middle Reach*" shall mean that portion of the Site, consisting of approximately 82 acres, that starts at the eastern end of the Prospector Square development in Park City, Utah, and includes the Silver Maple Claims portion of the Site, extends to U. S Highway 40 and is depicted generally in green on the map attached as Appendix D.

(m) "*National Contingency Plan*" or "*NCP*" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

(n) "*Non-Development Waste*" shall mean all other Waste Material that is not included in the definition of Development Waste above.

(o) "*Oversight Costs*" shall mean that portion of Future and Interim Response Costs incurred by EPA in monitoring and supervising Respondents' performance of the removal actions agreed to in this Settlement Agreement to determine whether such performance is consistent with the requirements of this Settlement Agreement, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Settlement Agreement, as well as costs incurred in overseeing implementation of the removal action; however, Oversight Costs do not include, inter alia, (1) the cost of activities by EPA pursuant to Section XVI (Emergency Response and Notification of Releases) of this Settlement Agreement; (2) the cost of enforcing the terms of this Settlement Agreement, including all costs incurred in connection with Dispute Resolution pursuant to Section XVIII (Dispute Resolution); and (3) the cost of securing access under Sections XI (Site Access) and XIII (Access to Information).

(o) "*Proprietary Controls*" shall mean easements or covenants running with the land that (a) limit land, water or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

(p) "*Paragraph*" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

(q) "*Parties*" shall mean EPA, BLM, the State of Utah and Respondents.

(r) "*Removal Action*" shall mean all actions necessary to implement the non-time critical removal action remedies selected in EPA's Action Memorandum decision document at the conclusion of each operable unit EE/CA, as to be set forth in a removal action Statement of Work and Work Plan for each respective operable unit.

(s) "*Respondents*" shall mean Park City Municipal Corporation and United Park City Mines Company.

(t) "*Repository*" shall mean either the existing repository at Richardson Flat OU 1 or a new repository to be constructed on portions of parcels SS-28-A-1-X and SS-27-B-X.

(u) "*Section*" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

(v) "*Settlement Agreement*" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXXIV). In the event of a conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

(w) "*Silver Maple Claims*" shall mean that portion of the Site, consisting of approximately 34 acres of the most upgradient area of the Site, that is near the eastern end of the Prospector Square development in Park City, Utah, that is in the custody and control of, and is managed by, the Bureau of Land Management and is depicted generally in brown on the map attached as Appendix D.

(x) "*Site*" shall mean the Richardson Flat Tailings Superfund Site, Operable Units #3 & #4, encompassing approximately 487 acres more or less located east of Park City and comprising specific areas along the Silver Creek, in Summit County, Utah, and depicted generally in blue on the map attached as Appendix A and generally described as the Middle Reach of Silver Creek, three parcels in Lower Silver Creek (OU 2) north of the Promontory Road in the southeast quarter of section 15 and the southwest quarter of section 14 township 1 south range 4 east SLB&M with parcel numbers SS-28-A-1-X, SS-27-B-X, SS-28-A-X and two parcels of land in the northwest quarter of section 26 township 1 south range 4 east SLB & M with parcel numbers SS-56-A-1 and SS-56 . The Site shall also include any areas in close proximity to the property previously described and necessary to accomplish the response action goals.

(y) "*State*" shall mean the Utah Department of Environmental Quality and the Utah Division of Parks and Recreation.

(z) "*Statement of Work*" or "*SOW*" shall mean any EPA Statement of Work developed after issuance of EPA's Site Action Memorandum that will govern the implementation of the Site removal action. The Statement of Work will be incorporated into this Settlement Agreement and will be an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Order. There



will be separate SOWs for each OU. [UPCM shall be responsible for drafting the SOW for OU3.]

(aa) "*Waste Material*" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

(bb) "*Work*" shall mean all activities Respondents are required to perform under any EPA Statement of Work or Work Plan and this Settlement Agreement, except those required by Section XIV (Retention of Records).

## SECTION V

### FINDINGS OF FACT

11. The Richardson Flat Tailings Superfund Site, Operable Units #3 and #4, encompasses approximately 487 acres in multiple parcels located east and north of Park City in areas along the Silver Creek, in Summit County, Utah, and is depicted generally in blue on the map attached as Appendix A. The Site can be delineated into three areas, which, beginning at the southern and most upstream portion of the Site, are as follows: Silver Maple Claims, Middle Reach, and parcels formerly part of Richardson Flat Tailings Operable Unit #2, namely, parcels SS-28-A-1-X, SS-27-B-X, SS-28-A-X located north of the Promontory road, that portion of SS-56-A-1 and SS-56 both located in the northwest quarter of section 26 T 1S R 4E.

xx. The Richardson Flat Tailings Superfund Site, Operable Unit #4, includes the Prospector Drain and any areas in close proximity to the property previously described and necessary to accomplish the response action goals.

12. Mining operations within the Park City Mining District reportedly produced large quantities of ore between 1875 and 1967. These operations reportedly caused tailings and mining waste to come to be located in and along Silver Creek and at the Site.

13. Respondent United Park City Mines (UPCM) is a corporation doing business in the State of Utah and was incorporated in the State of Delaware on May 8, 1953. Respondent UPCM conducted various mining-related operations within the Park City Mining District until approximately 1970 when it leased its' mining properties to Park City Ventures who then sublet these properties to Noranda Mining Incorporated in 1979. The predecessors-in-interest of Respondent UPCM also conducted mining operations in the area starting in the late 1800s. These activities included the mining of ore from the Ontario and Daly West mines, owned by Respondent UPCM. EPA asserts that mining waste from these operations has been carried downstream and has impacted portions of the Site.

yy. Other milling operations occurred upstream of the Site. These operations conducted by Reuben Garbett, Christian Anderson, Reuben Galvin, Nim Sweatfield, and the Park City Smelting Company were significant contributors to mining related materials being washed

downstream thus impacting portions of the Site. All of these operators are PRP's under CERCLA but are no longer viable entities and are considered to be Orphan Shares.

xx. Historic processing operations also occurred at Prospector Square, which is just upgradient and west of the Silver Maple Claims portion of the Site. This is a historical dump area for mill tailings. Vicinity mills, such as the Grasselli, Pacific Bridge, Park City Metals Company, Utah Ore Sampling, Peck Concentrator, and Broadwater mills operated at Prospector Square. These mills were operated by the Park City Metals Company, Grasselli Chemical, the Pacific Bridge Company and CC Broadwater Mills Company. All of these companies are PRP's under CERCLA and only Grasselli Chemical Company [is a viable entity and now owned by DuPont. ]

xx. The Prospector Square area was developed under the municipal authority of Respondent Park City Municipal Corporation (Park City) during the late 1970s and early 1980s, with dense commercial and residential buildings. Much of this new development has been built atop tailings material. The Prospector Square drain was designed to collect shallow groundwater from the land prior to development. It underlies portions of the developed area but its extent and exact locations are not known. The drain's flow is unevenly split between a constructed treatment wetland and a natural wetland area near the recreation park between Prospector Square and Silver Maple Claims. An EPA estimate based on the individual data points indicates that cumulative loading for metals, for the 20-year period of the operation of the Prospector drain, is approximately as follows: arsenic loading, 0.005 ug/l; cadmium loading, 0.932 ug/l; lead loading, 9.184 ug/l; zinc loading, 1188.8 ug/l [ too low it's more like 5000 and what is the flow??]. As all the water from the wetlands eventually flows into Silver Creek, this loading is a significant source for the metals contamination in the Creek.

15. Respondent Park City, a municipal corporation organized and existing under the laws of the State of Utah, has conducted activities associated with the above-referenced development and the collection of -contaminated water that ultimately discharges through a pipe located on-Site. These activities include the reconstruction of the Silver Creek stream channel through Prospector Square in about 1985 and reconstructing a portion of the drain pipe to accommodate the construction of a wetland treatment system in 2009. The pipe discharge point is located on land owned by Park City. These activities at Prospector Square have caused contamination to come to be located at the Silver Maple Claims and Middle Reach portions of the Site, as well as at other downgradient areas.

15. The Bureau of Land Management maintains custody and control and manages the Silver Maple Claims portion of the Site, which is depicted generally in brown on the map attached as Appendix D.

15. The Middle Reach portion of the Site is located directly downgradient of, and contiguous to, Silver Maple Claims, and is depicted generally in green on the map attached as Appendix D. Respondent Park City owns property within the portion of the Site designated as Middle Reach. Respondent United Park City Mines Company also owns property within the portion of the Site designated as the Middle Reach.

15a Several moderate to small sized mills were in operation in the Middle Reach portion of the site. Mills owned or leased by E. J. Beggs, Sherman Fargo, Phillip Morgan, Hanson Brothers and Fife, Charles D. Clegg and the Big Four Exploration Company were in operation in the Middle Reach portion of the Site. These operators are PRP's under CERCLA, are no longer viable and are considered to be Orphan Shares.

16. The Site includes approximately 322 acres along the flood plain of Silver Creek that were formerly part of Operable Unit #2 of the Richardson Flat Tailings Site, as well as the Prospector Drain and any areas necessary to accomplish the response action goals. The 322 acres that were formerly part of OU 2 are lands that were once under lease and operated by Asarco. This area is now to be addressed solely as part of this Site and Settlement Agreement and can be done so using Asarco Funds. Soil samples in this most downgradient portion of the Site have indicated high concentrations of lead (26,200 mg/kg), arsenic (745 mg/kg), zinc (18,700 mg/kg) and cadmium (119 mg/kg). Surface water sampling has identified elevated levels of cadmium (47.5 ug/l), lead (40 ug/l) and zinc (9,310 ug/l) in certain stretches of Silver Creek. The Echo Reservoir, a source of drinking water, is located 12.5 miles downstream of this area of the Site. The primary land use on this portion of the Site is commercial livestock grazing; however, a recreational use is in close proximity. A former rail line that runs across this area (as well as through the other portions of the Site) has been converted into a recreational trail that is now used extensively for hiking, biking, observing wildlife, and accessing Silver Creek for fishing,

17. Respondent Park City owns three Site parcels formerly part of Operable Unit #2, now part of Operable Unit #3, namely, parcels SS-28-A-1-X, SS-27-B-X, and SS-28-A-X. These parcels comprise approximately 180 acres of the northernmost portion of the Site, which includes approximately 50 acres of contaminated tailings located in floodplain areas. Respondent Park City also owns the Prospector Drain.

xx. Directly upgradient of the portions of the Site that were formerly part of Operable Unit #2, lies Operable Unit #1 of the Richardson Flat Tailings Site. Respondent UPCM, its predecessors and lessees conducted mining-related operations at Operable Unit #1, where approximately seven million tons of tailings have come to be located. Respondent UPCM continues to own, and is in the process of implementing remedial actions at Operable Unit #1 under a federal Consent Decree (Civil Action # 2:07-cv-00642-BSJ).

xx. In the broader Empire Canyon CERCLIS site, UPCM has undertaken CERCLA response activities under the supervision of EPA. UPCM entered into two Administrative Orders on Consent with EPA. The first, "Empire Canyon Administrative Order on Consent for Removal Action," EPA Docket No. CERCLA-08-2002-05 (EPA date-stamped May 14, 2002), required United Park to conduct an EE/CA for the Empire Canyon site. United Park's EE/CA was completed and the report was submitted to EPA on June 10, 2003. EPA then issued its Action Memorandum for the Empire Canyon site on November 6, 2003. Thereafter, United Park entered into a second Administrative Order, "Empire Canyon Administrative Order on Consent for Non-Time Critical Removal Action," EPA docket No. CERCLA-08-2004-0003 (EPA date-stamped December 16, 2003). The second Administrative Order on Consent required UPCM to conduct defined removal activities as set forth in relevant AOC deliverables, including the

"Empire Canyon Non-Time Critical Removal Action Work Plan" (EPA date-stamped March 15, 2004). The work required under the Action Memorandum was completed in 2007 and EPA acknowledged the completion of this work by a letter dated September 5, 2008. UPCM also submitted an Operations and Maintenance plan on June 19, 2009, which was approved by EPA on October 16, 2009.

15. The portion of Silver Creek that flows through the Site (approximately 5 miles of stream reach) is bordered by wetlands. The surface water samples indicate that cadmium, lead, and zinc concentrations exceed water quality standards for protection of aquatic life. A drinking water supply intake is located within 12.5 miles of the Site. Exposed tailings material on-Site presents the potential pathway of airborne migration of contaminants such as lead and arsenic however there is no evidence that this is occurring. Further, potential Site pathways exist in the form of dermal exposure and ingestion due to risks associated with potential contact with these materials and these exposed tailings. These potential exposure pathways for lead, arsenic, and cadmium may impact human health and the environment.

17. Depending on the level of exposure, lead can adversely affect the nervous system, kidney function, immune system, reproductive and developmental systems and the cardiovascular system. Lead is persistent in the environment and accumulates in soils and sediments. Ecosystems near sources of lead demonstrate a wide range of adverse effects including loss of biodiversity, changes in community composition, decreased growth and reproductive rates in plants and animals, and neurological effects in vertebrates. Cadmium and its compounds are extremely toxic even in low concentrations, and will bioaccumulate in organisms and ecosystems.

18. Operable Units # 2, #3 and #4 of the Richardson Flat Tailings Site are not proposed for listing on the National Priorities List ("NPL"). Operable Unit #1 of the Richardson Flat Tailings Site, referenced above, was originally proposed for inclusion on the NPL on June 24, 1988. Due to scoring issues and comments received from Respondents and others during the public comment period, Operable Unit #1 was removed from NPL consideration in February 1991. Operable Unit #1 was re-proposed for the NPL on February 7, 1992, however, no action has been taken with regard to this proposed listing, or the subsequently identified Operable Units #2, #3, or #4.

xx. The Utah Division of Parks and Recreation was deeded the Union Pacific Railroad right-of-way (which runs along Silver Creek through OU#2 and OU#3) on May 11, 1989 pursuant to a decision of the Interstate Commerce Commission. The purpose of the conveyance was to establish interim trail use and railbanking pursuant to the National Trails System Act, 16 U.S.C. § 1247 *et seq.*

## SECTION VI

### CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the Findings of Fact set forth above, and the Administrative Record supporting these response actions, EPA has determined that:

(a) Richardson Flat Tailings Site, Operable Units #3 and #4, are "facilities" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

(b) The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

(c) The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

(d) Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

(e) Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(i) Respondent Park City is an "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(ii) Respondents were the "owners" and/or "operators" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

(iii) Respondents arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

(g) The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective removal action and minimize litigation, 42 U.S.C. § 9622(a).

(h) EPA has determined that each Respondent is qualified to conduct the Work activities specifically assumed by such Respondent pursuant to the document attached as Appendix E, within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work, properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement Agreement.

## **SECTION VII**

### **SETTLEMENT AGREEMENT AND ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Parties shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## **SECTION VIII**

### **DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR**

28. *EE/CA*. All *EE/CA* Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel.

(a) Respondent UPCM has notified EPA that it intends to use the following personnel in carrying out such work: United Park City Mines personnel under the direction of Kerry C. Gee, and Resource Management Consultants, Inc., under the direction of James Fricke. EPA hereby approves Respondent's selection of the foregoing contractors and personnel. During the course of the *EE/CA*, Respondent shall notify EPA in writing of any changes or additions in the contractors or personnel used to carry out such Work, providing names, titles, and qualifications. EPA shall have the right to disapprove changes and additions to contractors or personnel in its discretion. If EPA disapproves in writing of any person's or contractors' technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA disapproves of designated Contractors or personnel, Respondent shall retain different Contractors or personnel and shall notify EPA of the name(s), address(es), telephone number(s) and qualifications within 15 days following EPA's disapproval.

(b) Respondent UPCM has designated Kerry C. Gee as its Project Coordinator who shall be responsible for administration of all *EE/CA* actions by Respondent UPCM required by this Settlement Agreement. EPA hereby approves Respondent's selection of the foregoing Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA 30 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 15 days following EPA's disapproval. EPA shall direct all submissions required by this Settlement Agreement to the Project Coordinator at:

Kerry C. Gee  
Vice President  
United Park City Mines Co.

Box 1450  
Park City, Utah 84060  
Office: 435-333-6601  
Cell: 801-694-0382

(c) Within 30 days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondent Park City shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. With respect to any proposed contractor, Respondent Park City shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995, or more recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent Park City shall be subject to EPA's review, for verification that such persons meet minimal technical background and experience requirements. This Settlement Agreement is contingent on Respondent Park City's demonstration to EPA's satisfaction that it is qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, Respondent Park City shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct the EE/CA and to seek reimbursement of costs and penalties from Respondent Park City. During the course of the EE/CA, Respondent Park City shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

(d) Within 15 days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondent Park City shall designate a Project Coordinator who shall be responsible for administration of all removal action Work required of Park City by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of a Respondent's designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, the subject Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 15 days following EPA's disapproval. Receipt by Respondent's Project Coordinator shall constitute receipt by Respondent of any notice or communication from EPA relating to this Settlement Agreement.

13. *Removal Action.* All Work conducted under this Settlement Agreement in performance of the removal action shall be under the direction and supervision of qualified personnel.

(a) Respondent UPCM has notified EPA that it intends to use the following personnel in carrying out such work: United Park City Mines personnel under the direction of Kerry C. Gee, and Resource Management Consultants, Inc., under the direction of James Fricke. EPA hereby approves Respondent's selection of the foregoing contractors and personnel. During the course of the EE/CA, Respondent shall notify EPA in writing of any changes or additions in the contractors or personnel used to carry out such Work, providing names, titles, and qualifications. EPA shall have the right to disapprove changes and additions to contractors or personnel in its discretion. If EPA disapproves in writing of any person's or contractors' technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA disapproves of designated Contractors or personnel, Respondent shall retain different Contractors or personnel and shall notify EPA of the name(s), address(es), telephone number(s) and qualifications within 15 days following EPA's disapproval.

(b) Respondent UPCM has designated Kerry C. Gee as its Project Coordinator who shall be responsible for administration of all removal actions by Respondent UPCM required by this Settlement Agreement. EPA hereby approves Respondent's selection of the foregoing Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA 30 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 15 days following EPA's disapproval. EPA shall direct all submissions required by this Settlement Agreement to the Project Coordinator at:

Kerry C. Gee  
Vice President  
United Park City Mines Co.  
Box 1450  
Park City, Utah 84060  
Office: 435-333-6601  
Cell: 801-694-0382

(c) Within 30 days of EPA's issuance of the Action Memorandum, and before the removal action Work outlined below begins, Respondent Park City shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. With respect to any proposed contractor, Respondent Park City shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995, or more recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("*QMP*"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent



Park City shall be subject to EPA's review, for verification that such persons meet minimal technical background and experience requirements. This Settlement Agreement is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, Respondent Park City shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement with respect to Respondent Park City, to conduct the removal, and to seek reimbursement of costs and penalties from such Respondent. During the course of the removal, Respondent Park City shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

(d) Within 15 days of EPA's issuance of the Action Memorandum, Respondent Park City shall designate a Project Coordinator who shall be responsible for administration of all removal action Work required of Respondent Park City by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of a Respondent's designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent Park City shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 15 days following EPA's disapproval. Receipt by Respondent's Project Coordinator shall constitute receipt by Respondent of any notice or communication from EPA relating to this Settlement Agreement.

15. EPA has designated Kathryn Hernandez of EPA's Ecosystems Protection and Remediation Office, Region 8, as its Project Coordinator. EPA will notify Respondent of a change of its designated Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the Project Coordinator at:

Kathryn Hernandez  
Remedial Project Manager  
Superfund Remedial Section, 8EPR-RA  
US EPA, Region VIII,  
1595 Wynkoop Street  
Denver, Colorado 80202

17. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work.

17. EPA shall arrange for a qualified person to assist in its oversight and review of both the conduct of the EE/CA and the removal action, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the EE/CA or removal action Work Plan.

17. EPA, BLM and the State shall be granted sole oversight authority over Respondents with relation to the Work to be performed pursuant to this Settlement Agreement, and no municipal action shall be deemed as guarantying any municipal oversight, approval authority or review rights with regard to the matters discussed in this Settlement Agreement.

18. EPA and Respondents shall have the right, subject to Paragraph 13, to change their respective designated RPM or Project Coordinator. Respondents shall notify EPA 30 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice. If EPA disapproves of the change in any designated Project Coordinator, the subject Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 15 days following EPA's disapproval.

## **SECTION IX**

### **EE/CA WORK TO BE PERFORMED**

19. Respondent Park City shall conduct an EE/CA addressing discharges from the Prospector Drain (OU#4) and Respondent UPCM shall conduct an EE/CA for OU#3. Each Respondent shall conduct the Work activities related to performance of the EE/CA in accordance with the provisions of this Settlement Agreement, the attached Work Plans developed for performance of each EE/CA, CERCLA, the NCP, and EPA guidance. The Engineering Evaluation ("EE") shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Cost Analysis ("CA") shall determine and evaluate (based on treatability testing, where appropriate) alternatives for the removal action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to; the range of alternatives described in the NCP, and shall include removal actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). Upon request by EPA, Respondents shall submit in electronic form all portions of any plan, report or other deliverable such Respondent is required to submit pursuant to provisions of this Settlement Agreement.

20. Upon receipt of the draft CA report submitted by each Respondent (which shall contain such Respondent's evaluation of the durability, reliability and effectiveness of any proposed Institutional Control), EPA will evaluate, as necessary, the estimates of the risk to the

public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the durability, reliability and effectiveness of any proposed Institutional Controls.

21. *Modification of the EE/CA Work Plan.*

(a) In the event of unanticipated or changed circumstances at the Site, Parties shall notify the EPA Project Coordinator within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the EE/CA Work Plan, EPA shall modify or amend the EE/CA Work Plan in writing accordingly. Respondents shall perform the EE/CA Work Plan as modified or amended.

(b) EPA may determine that in addition to tasks defined in the initially approved EE/CA Work Plan, other additional Work may be necessary to accomplish the objectives of the EE/CA. Respondents agree to perform these actions in addition to those required by the initially approved EE/CA Work Plan, including any approved modifications, if EPA determines that such actions are necessary to complete an EE/CA.

(c) Respondents shall confirm their willingness to perform the additional Work in writing to EPA within 7 days of receipt of the EPA request. If either Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, such Respondent may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). The EE/CA Work Plan shall be modified in accordance with the final resolution of the dispute.

(d) Respondents shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the EE/CA Work Plan or written EE/CA Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

(e) Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

22. *Meetings.* Respondents shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the EE/CA. In addition to discussion of the technical aspects of the EE/CA, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

23. *EE/CA Progress Reports.* In addition to the plans, reports and other deliverables set forth in this Order, Respondents shall provide to EPA quarterly progress reports by the 15th day of the following month. At a minimum, with respect to the preceding quarter, these progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during that quarter, (2) include all results of sampling and tests and all other data received by Respondents, (3) describe Work planned for the next two quarters with schedules relating such Work to the overall project schedule for EE/CA completion, and (4) describe all

problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

24. *Quality Assurance.* Respondents shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the Work Plan, the QAPP and guidances identified therein. Respondents will assure that field personnel used by such Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories which have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

25. *Sampling.* (a) All results of sampling, tests, modeling, or other data (including raw data) generated by Respondents, or on their behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA, BLM and the State in the next quarterly progress report as described in Paragraph 30 of this Settlement Agreement. EPA will make available to Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

(b) Respondents shall verbally notify EPA, BLM and the State at least 30 days prior to conducting significant field events as described in the EE/CA Work Plan or Sampling and Analysis Plan. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by EPA, BLM and the State (and their authorized representatives) of any samples collected in implementing this Settlement Agreement. All split samples of Respondents shall be analyzed by the methods identified in the QAPP.

xx. Respondents shall submit to EPA, BLM and the State 2 copies of all plans, reports or other submissions required by this Settlement Agreement, the EE/CA Work Plan, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

xx. Each Respondent shall be given the opportunity to review and comment upon the other's draft EE/CA prior to EPA approval of that document. EPA will consider each Respondent's comments and provide a written response to such comments. Respondents comments and EPA's comments shall be placed in the administrative record for the Site.

## **SECTION X**

### **PERFORMANCE OF REMOVAL**

26. Respondents shall conduct the Work activities related to performance of the removal action as specifically assumed by such Respondent pursuant to Paragraph 19. Each Respondent shall perform, at a minimum, all actions necessary to accomplish the tasks set forth as their responsibility to implement the removal action remedy selected in EPA's Action Memorandum. The actions to be implemented generally include, but are not limited to, the

activities that will be identified in the removal action Statement of Work and Work Plan, as well as the activities identified in this Section.

26. *Removal Action Work Plan and Implementation.* (a) Within 30 days after EPA issues the Site Action Memorandum, each Respondent shall submit to EPA for approval a draft Work Plan for performance of their identified tasks related to implementation of the removal action. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

(b) EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, the subject Respondent shall submit a revised draft Work Plan within 15 days of receipt of EPA's notification of the required revisions. Such Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

(c) Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 36(b).

27. *Removal Health and Safety Plan.* Within 30 days after EPA issues the Site Action Memorandum, each Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Each Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

28. *Removal Quality Assurance and Sampling.* (a) Each Respondent shall prepare a Quality Assurance Project Plan ("QAPP") in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/-98/018, February 1998).

(b) All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Each Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Each Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Each Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs"

(American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

(b) Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

(c) Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 30 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the subject Respondent to take split or duplicate samples of any samples it takes as part of its oversight of subject Respondent's implementation of the Work.

29. *Removal Reporting.* (a) Each Respondent shall submit a quarterly written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement on every 15th day of January, April, July, and October after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

(b) Each Party who owns or controls property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Each Party who owns or controls property at the Site also agrees to require that their successors comply with the immediately preceding sentence and Sections XI (Site Access) and XIII (Access to Information).

31. *Final Removal Report.* Within 30 days after completion of all Work required by this Settlement Agreement, each Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the

removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

32. Each Respondent shall submit to EPA 2 copies of all plans, reports or other submissions required by this Settlement Agreement, the removal Statement of Work, or any approved work plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

32. *Off-Site Shipments.* (a) Each Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(i) Each Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(ii) The identity of the receiving facility and state will be determined by each Respondent following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 32(a) and (b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

(b) Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, each Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121 (d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

xx. If the "Pace" properties are ultimately chosen as an on-site repository, Respondent Park City shall donate those parcels to Respondent UPCM for this purpose and Respondent

UPCM shall operate the repository to accomplish the goals of this response action. EPA will construct the repository using Asarco funds. Respondent Park City shall be allowed to dispose of 362,000 cubic yards of Development Waste in the repository, with a required tipping fee of \$\_\_\_\_\_ per cubic yard paid to Respondent UPCM. Respondent Park City shall also be allowed to dispose of \_\_\_\_\_ cubic yards of Non-Development Waste in the repository, with a required tipping fee of \$\_\_\_\_\_ per cubic yard paid to Respondent UPCM.

xx. The rules and regulations regarding the operation of the repository mentioned in the immediately preceding paragraph are attached as Appendix F and incorporated herein as part of this Settlement Agreement. The rules preempt and prohibit any additional municipal laws, ordinances, zoning regulations or other local governmental controls attempting to regulate, or effect regulation of, the repository,

[xx. EPA will fund cleanup of the area identified in Appendix G using Asarco funds.]

## **SECTION XI**

### **SITE ACCESS AND INSTITUTIONAL CONTROLS**

33. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by either of the Respondents to this Settlement Agreement:

(a) such Respondent shall, commencing on the Effective Date of this Settlement Agreement, provide the United States, BLM, and the State, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, which also would, as a threshold, be required to satisfy reasonable steps pursuant to 42 U.S.C. § 9601(40), to conduct any activity regarding this Settlement Agreement including, but not limited to, the following activities:

- (i) Monitoring the Work;
- (ii) Verifying any data or information submitted to the United States, BLM, or the State;
- (iii) Conducting investigations regarding contamination at or near the Site;
- (iv) Obtaining samples;
- (v) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (vi) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (vii) Implementing the Work pursuant to this Settlement Agreement;



(viii) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section \_\_ (Access to Information);

(ix) Assessing Respondents' compliance with this Settlement Agreement;

(x) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Settlement Agreement; and

(xi) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

(b) commencing on the effective date of this Settlement Agreement, Respondents shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the response measures to be performed pursuant to this Settlement Agreement. Such restrictions shall be considered during the conduct of the Site EE/CA and set forth in the Site Action Memorandum; and

(c) such Respondents shall:

(i) execute and record in the Recorder's Office of Summit County, State of Utah, pursuant to Utah Code Ann. §§ 57-25-101 *et seq.*, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding this Settlement Agreement including, but not limited to, those activities listed in Paragraph 33(a), and (ii) grant the right to enforce the land/water use restrictions referenced in Paragraph 33(b).

(ii) the Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (1) the United States, on behalf of EPA and BLM, and their representatives or (2) the State and its representatives. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State, as appropriate) is a "third-party beneficiary," allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

(iii) within 45 days of EPA's issuance of the Site Action Memorandum, submit to EPA for review and approval regarding such real property: (i) a draft Proprietary Control that is enforceable under state law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Respondents are unable to obtain release or subordination of such prior liens or encumbrances).

(iv) within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Control Recorder's Office of Summit County, State of Utah, pursuant to Utah Code Ann. §§ 57-25-101 *et seq.* Within 30 days of recording the Proprietary Control, such Respondents shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. §3111.

(d) BLM shall, with respect to the Silver Maple Claims portion of the Site that is in the custody and control of BLM, commencing on the Effective Date of this Settlement Agreement, provide EPA, Respondents, and the State, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site to conduct any activity regarding this Settlement Agreement, as listed in subparagraph (a) of this paragraph.

34. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than any Respondent, Respondents shall use best efforts to secure from such persons:

(a) an agreement to provide access thereto for the EPA, BLM, and the State and Respondents, and their representatives, contractors and subcontractors, to conduct any activity required by this Settlement Agreement including, but not limited to, the activities listed in Paragraph 33(a);

(b) an agreement, enforceable by each Respondent and EPA, BLM and the State, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the response action. The agreement shall include, but not be limited to, the land/water use restrictions referenced in Paragraph 33(b); and

(c) (i) the execution and recordation in the Recorder's Office of Summit County, State of Utah, pursuant to Utah Code Ann. §§ 57-25-101 *et seq.*, of Proprietary Controls, that (1) grant a right of access to conduct any activity regarding this Settlement Agreement including, but not limited to, those activities listed in Paragraph 33(a), and (2) grant the right to enforce the land/water use restrictions referenced in Paragraph 33(b).

(ii) the Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (1) EPA, BLM and their representatives, (2) the State and its representatives, (3) Respondents and their representatives, and/or (4) other appropriate grantees. The Proprietary Controls, other than those granted to the governments, shall include a designation that EPA (and/or the State as appropriate) is a

"third party beneficiary," allowing EPA to maintain the right to enforce the Proprietary Control without acquiring an interest in real property. If any Proprietary Controls are granted to any Respondent pursuant to this Paragraph 34(c)(ii), then such Respondent shall monitor, maintain, report on, and enforce such Proprietary Controls.

(iii) within 45 days of EPA's issuance of the Site Action Memorandum, Respondent UPCM shall submit to EPA for review and approval regarding such property: (i) a draft Proprietary Control that is enforceable under state law; and (ii) a current title insurance commitment, or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances).

(iv) within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, Respondents shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, the Proprietary Control shall be recorded with the Recorder's Office of Summit County, State of Utah, pursuant to Utah Code Ann. §§ 57-25-101 *et seq.* Within 30 days of the recording of the Proprietary Control, Respondents shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

35. For purposes of Paragraphs 33 and 34, "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, a Proprietary Control, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within 60 days of the Effective Date, Respondents have not: (a) obtained agreements to provide access, restrict land/water use or record Proprietary Controls, as required by Paragraph 34(a), 34(b) or 34(c); or (b) obtained, pursuant to Paragraph 33(c)(i) or 34(c)(i), agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Respondents shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that each Respondent has taken to attempt to comply with Paragraph 33 or 34. EPA may, as it deems appropriate, assist in obtaining access, agreements to restrict land/water use, Proprietary Controls, or the release or subordination of a prior lien or encumbrance. Respondents shall reimburse, as part of Future Response Costs, the United States under Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by EPA in obtaining such access, agreements to restrict land/water use, Proprietary Controls, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

36. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed, the Parties shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls. Respondents are prohibited from instituting any additional laws, regulations, ordinances, zoning restrictions, or other governmental controls affecting matters or property addressed by this Settlement Agreement.

37. Notwithstanding any provision of this Settlement Agreement, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, and any other applicable statute or regulations.

## **SECTION XII**

### **EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

36. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a notice to the appropriate Respondent, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. Any disapproval or modification shall be consistent with the purposes set forth in Paragraph 9 (Statement of Purpose). However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work, would delay an emergency response, or where previous submission(s) have been disapproved due to Material Defects.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 36(a), (b), (c) or (e), the subject Respondent shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 36(c) and the submission had a Material Defect, EPA retains the right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

38. *Resubmission.* (a) Upon receipt of a notice of disapproval, the subject Respondent shall, within 15 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 15-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 36 and 37.

(b) Notwithstanding the receipt of a notice of disapproval, the subject Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve such Respondent of any liability for stipulated penalties under Section XX (Stipulated Penalties).

(c) *EE/CA.* (i) Each Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition or modification of the following deliverables: EE/CA Sampling and Analysis Plan, Draft Engineering Evaluation Report and Treatability Testing Work Plan and Draft Cost Analysis Report. While awaiting EPA approval, approval on condition or modification of these deliverables, Respondent shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement.

(ii) For all remaining deliverables not listed above in subparagraph (c)(i), each Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the EE/CA or removal.

(d) *Removal Action.* Designation of the removal action deliverables that require a Respondent to halt any subsequent activities or tasks until receiving EPA approval, approval on condition or modification, shall be identified in the removal action Statement of Work and Work Plan.

39. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct a Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other deliverable. Such Respondent shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVIII (Dispute Resolution).

40. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a Material Defect, the subject Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless such Respondent invokes the dispute resolution procedures in accordance with Section XVIII (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVIII (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVIII, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

41. In the event that EPA takes over some of the EE/CA tasks, but not the preparation of the EE Report or the CA Report, the subject Respondent shall incorporate and integrate information supplied by EPA into the final reports. In conducting the Work, Respondents may rely on and incorporate data (including human health risk and ecological risk assessments) previously conducted by EPA; however, all such data shall conform to quality assurance requirements as set forth in the EE/CA Work Plan, the QAPP and guidance identified therein.

42. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

43. Neither failure of EPA to expressly approve or disapprove of a Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for a Respondent's deliverables, the Respondent is responsible for preparing deliverables acceptable to EPA.

### **SECTION XIII**

#### **ACCESS TO INFORMATION**

44. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. With the exception of confidential or privileged information described in paragraphs 45 and 46, below, EPA shall make all such information, upon request, available to the Parties.

45. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents. Respondents shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondents asserts business confidentiality claims.

46. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

47. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site. However, Respondents agree not to use such data in ways prohibited in Paragraph 49.

48. In entering into this Settlement Agreement, Respondents waive any objections to any data gathered, generated, or evaluated by EPA or Parties in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the Settlement Agreement or any EPA-approved work plans or Sampling and Analysis Plans. If Respondents object to any other data, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the quarterly progress report containing the data.

49. No data, information, samples or materials generated during the course of or in relation to the response actions performed pursuant to this Settlement Agreement shall not be used by any Party for any purpose whatsoever, including any adversary proceeding, action, process, procedure or undertaking, whether formal, informal, administrative, municipal, judicial, or otherwise (whether in relation to the Site or otherwise), other than a proceeding to enforce the terms of this Settlement Agreement or a proceeding for injunctive relief for this Site pursuant to CERCLA Section 106. Respondents agree that they shall not use or attempt to use any data, information, samples or other materials generated or discovered pursuant to or in relation to this Settlement Agreement, or as a result of or in connection with any of the activities contemplated hereunder, to make any allegations or inferences involving, or to assert any claims against each other for, liability for environmental or contaminant issues at the Site or within either the Silver Creek watershed or the East Canyon Creek watershed. This prohibition shall include, by way of example and not by way of limitation, actions filed in a court of law, administrative or municipal undertakings or actions; representations made to federal, state or local government authorities; and statements made to the media or members of the general public.

## **SECTION XIV**

### **RECORD RETENTION**

49. During the pendency of this Settlement Agreement and for a minimum of 10 years after Respondents' receipt of EPA's notification pursuant to Section XXXI (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXXI (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

50. At the conclusion of this document retention period, Respondents shall notify EPA and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or the State, Respondents shall deliver any such records or documents to EPA or the State. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA or the State with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

51. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## **SECTION XV**

### **COMPLIANCE WITH OTHER LAWS**

52. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the



exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent UPCM shall identify ARARs, subject to EPA approval, as part of the EE/CA.

## **SECTION XVI**

### **EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

53. In the event of any action or occurrence during performance of Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Respondent performing the Work task shall immediately take all appropriate action. The Respondent performing the Work task shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. The Respondent performing the Work task shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, an On Scene Coordinator ("OSC") or Curtis Kimbel, Emergency Response Unit, EPA Region 8 Preparedness, Assessment and Emergency Response Program, at 303-312-6108, and the Region 8 Emergency Response Spill Report Hotline, at 1-800-227-8914 of the incident or Site conditions. In the event that the Respondent performing the Work task fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, such Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Payment of Response Costs).

54. In addition, in the event of any release of a hazardous substance from the Site, the Respondent performing the Work task, as well as the Respondent that knows or should have known of the circumstance, shall immediately notify the EPA Project Coordinator, an OSC or the Regional Duty Officer at Region 8 Emergency Response Spill Report Hotline, at 1-800-227-8914 and the National Response Center at (800) 424-8802. Such Respondent(s) shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

## **SECTION XVII**

### **PAYMENT OF RESPONSE COSTS**

73. *Payments of Future Response Costs.* (a) Each Respondent shall pay EPA Future Response Costs, not inconsistent with the NCP, pursuant to the following cost allocation. Respondent UPCM shall pay to EPA [% of] for Future Response Costs, except future Oversight Costs. Respondent Park City shall pay to EPA [% of] for Future Response Costs. On a periodic

basis, EPA will send each Respondent a bill requiring payment that includes a Region 8 Cost Summary. Each Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 74 of this Settlement Agreement.

Payment shall be made to EPA by Electronic Funds Transfer ("*EFT*") in accordance with current EFT procedures to be provided to Respondent by EPA Region 8, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number 08-94, and the EPA docket number for this action.

(b) At the time of payment, Respondents shall send notice that payment has been made to:

Martha Walker  
Finance Program Manager  
Superfund Remedial Section, 8TMS-FMP  
US EPA, Region VIII,  
1595 Wynkoop Street  
Denver, Colorado 80202

and to:

Maureen O'Reilly  
Superfund Enforcement  
U.S. EPA Region 8  
8ENF-RC  
1595 Wynkoop Street  
Denver, CO 80202

and by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), and to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

(c) The total amount to be paid by each Respondent pursuant to Subparagraph 73(a) shall be deposited in the Richardson Flat Tailings Site, Operable Unit #3, Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

74. If a Respondent does not pay Future Response Costs within 30 days of Respondent's receipt of a bill, such Respondent shall pay Interest on the unpaid balance of such Future Response Costs. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under

this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of such Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondents shall make all payments required by this Paragraph in the manner described in Paragraph 73.

75. A Respondent may contest payment of any Future Response Costs under Paragraph 73 if it determines that EPA has made an accounting error or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, such Respondent shall within the 30 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 73. Simultaneously, such Respondent shall establish an interest-bearing escrow account in a federally insured bank duly chartered in the State of Utah and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Such Respondent shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, such Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, such Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 73. If such Respondent prevails concerning any aspect of the contested costs, such Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 73. Such Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding such Respondent's obligation to reimburse EPA for its Future Response Costs.

xx. Respondents shall share in the costs they each incur as follows: Respondent UPCM will pay to Respondent Park City 20% of all response costs incurred by Respondent Park City in performing EPA-approved work on OU#4, provided UPCM bears no direct or indirect cost or responsibility for any costs related to water or water treatment or water quality. Respondent Park City will pay to Respondent UPCM 10% of all response costs incurred by Respondent UPCM in performing EPA-approved work on OU#3.

## **SECTION XVIII**

### **DISPUTE RESOLUTION**

59. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes

arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

60. If any Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 30 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "*Negotiation Period*"). The non-objecting Respondent shall also be given the option of participating in any formal negotiations. The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

61. Any agreement reached between EPA and any Respondent pursuant to this Section shall be in writing and shall, upon signature by EPA and both Respondents, be incorporated into and become an enforceable part of this Settlement Agreement. If EPA and Respondent are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

53. The following dispute resolution process pertains to all disputes between EPA and BLM regarding all EE/CA and removal action Work activities affecting the Silver Maple Claims portion of the Site.

54. EPA and BLM will cooperate to the fullest extent possible to ensure that the EE/CA is performed and that removal action Work activities, as selected in EPA's Action Memorandum (issued with the concurrence of BLM), is fully and completely implemented, as well as to maximize the use of the resources available for the successful completion of Operation and Maintenance activities. In the event of a disagreement between the Agencies, the Agencies agree to attempt to negotiate a mutually acceptable resolution of the issues to the fullest extent possible, as specified by the following provisions:

(i) EPA and BLM have coordinated their respective CERCLA response authorities at the Silver Maple Claims portion of the Site. EPA plans to issue a Site Action Memorandum under CERCLA authorities with the concurrence of BLM. If a dispute between EPA and BLM arises concerning any matter addressed under this Settlement Agreement, and the dispute cannot be resolved at the project manager/staff attorney level, the disputing party shall identify the dispute to the other party in writing. EPA and BLM shall have 14 days to resolve the dispute informally if possible. At the end of the 14-day informal dispute period, if the dispute is not resolved, the disputing party shall again state the dispute in writing in a letter addressed to the BLM Regional Director, and the Deputy Assistant Regional Administrator for Office of Enforcement,

Compliance, and Environmental Justice ("EPA Deputy ARA"), EPA Region 8. The other party shall have 7 days to respond to this dispute letter. The BLM Regional Director and the EPA Deputy ARA shall then have 14 days to resolve the dispute. If, at the end of this 14-day period, the dispute cannot be resolved, all dispute letters and responses shall be forwarded to the Assistant Regional Administrator for Office of Enforcement, Compliance, and Environmental Justice ("EPA ARA"), EPA Region 8, and the BLM Associate Director. The EPA ARA and BLM Associate Director shall consult concerning the dispute and shall attempt to issue a joint decision regarding the issue within 14 days of receipt of the dispute letters. In the event the EPA ARA and BLM Associate Director are unable to issue a joint determination, the EPA ARA will issue a decision. The EPA ARA shall consider the BLM position in this matter in light of the BLM's responsibilities and authorities as the federal land management agency responsible for the management and stewardship of Silver Maple Claims. If unsatisfied with the decision of the EPA ARA, the BLM may initiate consultation with the Section Chief, Environmental Enforcement Section, US Department of Justice, regarding the EPA ARA decision. The EPA ARA will participate in that consultation process and consider the results of that consultation before making a final decision that will represent the final remedial action decision of the federal agencies. Any final decision reached pursuant to this paragraph shall not be subject to judicial review by any Party, including the Agencies. The time periods listed herein may be increased or decreased by mutual agreement of the Agencies.

## SECTION XIX

### FORCE MAJEURE

62. Each Respondent agrees to perform all Work assumed by it, pursuant to the document attached as Appendix E, within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of the subject Respondent, or of any entity controlled by the subject Respondent, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite the subject Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

63. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, the subject Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within five days thereafter, the subject Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the

environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

64. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify the subject Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify the subject Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

## SECTION XX

### STIPULATED PENALTIES

65. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 66 and 67 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Paragraph \_\_\_\_ (*Stipulated Penalty Exception*) or Section XIX (*Force Majeure*). "Compliance" by Respondents shall include completion of the Work responsibilities assumed pursuant to the document attached as Appendix E of this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, the EE/CA Work Plan, the removal action SOW and Work Plan, and any plans or other documents approved by EPA pursuant to this Settlement Agreement, and within the specified time schedules established by and approved under this Settlement Agreement.

66. *Stipulated Penalty Amounts.* (a) The following stipulated penalties shall accrue per day for failure to timely or adequately submit the following EE/CA deliverables: "Site Characterization Summary Report," "Identification and Analysis of Removal Action Alternatives," "Comparative Analysis of Removal Action Alternatives/Recommended Removal Action Alternative." The following stipulated penalties shall also accrue per day for failure, during implementation of removal response actions, to submit a timely or adequate: "Action Memo Work Plan," "Design Schedule Report" and "Design Summary Report."

PENALTY PER VIOLATION PER DAY	PERIOD OF NONCOMPLIANCE
\$ 250	1st through 14th day
\$ 1,000	15th through 30th day
\$37,500	31st day and beyond

(b) The following stipulated penalties shall accrue per day for failure to establish any required escrow account and failure to submit timely or adequate reports pursuant to the EE/CA

Work Plan and the removal action SOW or Work Plan, where an extension for the report has not been granted in writing prior to the due date by EPA's Project Coordinator:

PENALTY PER VIOLATION PER DAY	PERIOD OF NONCOMPLIANCE
\$ 100	1st through 14th day
\$ 700	15th through 30th day
\$10,000	31st day and beyond

(c) The following stipulated penalties shall accrue per day for failure to submit timely or adequate quarterly progress reports: \$143 per violation, for the first week of noncompliance; \$500 per day, per violation, for the 8th through 14th day of noncompliance; \$710 per day, per violation, for the 15th day through the 30th day; and \$2,000 per day, per violation, for all violations lasting beyond 30 days.

61. In the event that EPA assumes performance of a portion or all of the Work required of a Respondent during performance of the EE/CA, pursuant to Paragraph 79 (Work Takeover) of Section XX (Reservation of Rights by EPA), that Respondent shall be liable for a stipulated penalty in the amount of \$50,000. In the event that EPA assumes performance of a portion or all of the Work assumed by a Respondent during performance of the removal action, pursuant to Paragraph 79 (Work Takeover) of Section XX (Reservation of Rights by EPA), that Respondent shall be liable for a penalty in an amount to be determined by at the discretion of EPA, but not to exceed \$100,000.

68. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Sections IX or X (EE/CA Work to be Performed, Performance of Removal), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the EPA Management Official designated in Paragraph 58 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

69. Following EPA's determination that a Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

64. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution). All payments to EPA under this Section shall indicate that the payment is for

stipulated penalties, shall reference the EPA Region, the Site/Spill ID Number 08-94, the EPA Docket Number \_\_\_\_\_, the name and address of the party(ies) making payment, shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and shall be mailed to:

Regular mail:

Mellon Bank  
EPA Region VIII  
Attn: Superfund Accounting  
Post Office Box 360859  
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank  
3 Mellon Bank Center  
ROOM#153-2713  
Pittsburgh, Pennsylvania 15259

or other such address as EPA may designate in writing, or by wire transfer to:

ABA=021030004  
TREAS NYC/CTR/  
BNF=/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to:

Martha Walker  
Finance Program Manager  
Superfund Remedial Section, 8TMS-FMP  
US EPA, Region VIII,  
1595 Wynkoop Street  
Denver, Colorado 80202

and to:

Maureen O'Reilly  
Superfund Enforcement  
U.S. EPA Region 8  
8ENF-RC  
1595 Wynkoop Street  
Denver, CO 80202



65. At the time of payment, Respondent shall send notice that payment has been made by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), and to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

66. The payment of penalties shall not alter in any way a Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

72. Penalties shall continue to accrue as provided in Paragraph 62 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

73. If a Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 52.

69. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). *Provided, however*, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 79 (Work Takeover). Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

74. *Stipulated Penalty Exception.* Penalties shall apply, as set forth in this Section, in all circumstances related to the EE/CA and the removal action with the following specific exclusion. For a period of 30 days after EPA issues the Action Memorandum, no stipulated or statutory penalties shall accrue with respect to the decision, to be made by each Respondent, to implement the removal action Work. If a Respondent decides not to implement such work, EPA may void the Settlement Agreement as to that Respondent and: (1) issue a Unilateral Administrative Order pursuant to Section 106(a) of CERCLA against that Respondent; or (2) bring a claim in federal district court to enforce an injunction for performance of the removal action Work against that Respondent under this Settlement Agreement. In either instance, any Respondent that decides not to implement the work identified in the Action Memorandum shall not be subject to stipulated or statutory penalties under this Settlement Agreement for that decision and any related failures or delays. If EPA brings a claim to enforce a Respondent's performance of the removal action Work, EPA shall not seek, and shall be prohibited from

seeking, stipulated or statutory penalties in that action. If EPA is successful in obtaining an injunction for performance of the removal action Work under this Settlement Agreement, EPA shall not impose, and shall be prohibited from imposing, stipulated or statutory penalties for past failures or delays, but shall be permitted to impose stipulated or statutory penalties for future failures or delays. A decision by any Respondent not to implement the work identified in the Action Memorandum shall not enable EPA to implement a Work Takeover (as defined in Paragraph 79) and shall not trigger the associated stipulated penalties identified in Paragraph 61

## **SECTION XXI**

### **COVENANT NOT TO SUE BY EPA AND BLM**

76. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA and BLM covenant not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Interim and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon, as to each individual Respondent, that Respondent's complete and satisfactory performance of all of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XVII. This covenant not to sue extends only to the qualifying Respondent and does not extend to any other person. EPA and BLM covenant not to sue or to take administrative action against the Utah Division of Parks and Recreation pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Interim and Future Response Costs.

## **SECTION XXII**

### **RESERVATIONS OF RIGHTS BY EPA**

77. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA, BLM or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA or BLM from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

78. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA and BLM reserve, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- (a) claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- (b) liability for costs not included within the definition of Interim or Future Response Costs;
- (c) liability for performance of response action other than the Work;
- (d) criminal liability;
- (e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- (f) liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;
- (g) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site; and
- (h) claims based upon a failure to implement the removal action Work subsequent to a period of 30 days after EPA's issuance of the Site Action Memorandum.

79. *Work Takeover.* In the event EPA determines that a Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary ("*Work Takeover*"). However, EPA shall not be permitted to implement a Work Takeover in the instance that a Respondent decides not to conduct the removal action Work pursuant to paragraph 74 (*Stipulated Penalty Exclusion*). EPA shall issue a written notice ("*Work Takeover Notice*") to Respondent before a Work Takeover. Any Work Takeover Notice will specify the grounds upon which such notice was issued and will provide Respondent a period of 10 days within which to remedy the circumstances. If, after expiration of the 10-day notice period, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion of the Work as EPA deems necessary. In the event, however, that an emergency situation or immediate threat to public health or welfare or the environment exists, EPA will not issue a Work Takeover Notice to Respondent and may at any time assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that the Respondent responsible for performing such Work task shall pay pursuant to Section XVII (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **SECTION XXIII**

### **COVENANT NOT TO SUE BY RESPONDENTS**

80. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Work, Interim or Future Response Costs, or this Settlement Agreement, including, but not limited to:

(a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

(b) any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

(c) any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, or Interim or Future Response Costs.

81. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

82. Respondents agree that they will not assert any claims and will waive all claims or causes of action that they may have against each other or against the Utah Division of Parks and Recreation relating to or stemming from releases of hazardous substances or discharges of pollutants from Prospector Square and OU#3. Respondents agree that they shall not make any allegations or assert any claims against each other for liability for environmental or contaminant issues at the Site or within either the Silver Creek watershed or the East Canyon Creek watershed, or anywhere tributary to the foregoing, including, by way of example and not by way of limitation, Empire Canyon, Empire Creek, Thayne's Canyon Creek, Judge Tunnel, Spiro Tunnel, and Prospector Drain. This prohibition shall include, by way of example and not by way of limitation, actions filed in a court of law, administrative or municipal undertakings or actions, representations made to federal, state or local government authorities, and statements made to the media or members of the general public.

## **SECTION XXIV**

### **OTHER CLAIMS**

84. By issuance of this Settlement Agreement, the United States, EPA and BLM assume no liability for injuries or damages to persons or property resulting from any acts or omissions of

Respondents. The United States, EPA or BLM shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

85. Except as expressly provided in Section \_ (Covenant Not to Sue by EPA and BLM), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

86. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## **SECTION XXV**

### **CONTRIBUTION**

87. (a) The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents and the Utah Division of Parks and Recreation are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may otherwise be provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Interim and Future Response Costs.

(b) The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents and the Utah Division of Parks and Recreation have, as of the Effective Date, resolved their liability to the United States for the Work and Interim and Future Response Costs.

(c) Except as provided in Section \_\_\_\_ (Covenant Not to Sue by Respondent), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Nothing in this Settlement Agreement precludes the United States, the State or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

## **SECTION XXVI**

### **INDEMNIFICATION**

88. Each Respondent shall indemnify, save and hold harmless the United States, the State, their officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of such Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, each Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of such Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States and the State shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States or the State.

89. The United States and the State shall give Respondents notice of any claim for which the United States or the State plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

90. Respondents waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, each Respondent shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between such Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

## **SECTION XXVII**

### **INSURANCE**

91. At least 30 days prior to commencing any on-Site work under this Settlement Agreement, each Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of 1 million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, each Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Each Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, each Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation

insurance for all persons performing the Work on behalf of each Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## SECTION XXVIII

### FINANCIAL ASSURANCE

92. (a) Within 30 days of the Effective Date, each Respondent shall establish and maintain financial security for the benefit of EPA. The amount for Respondent Park City shall be \$ **[insert estimated cost of Work]**. The amount for Respondent UPCM shall be \$ **[insert estimated cost of Work]**. The financial security shall be in one or more of the following forms, in order to secure the full and final completion of Work by each Respondent:

(i) a surety bond unconditionally guaranteeing payment and/or performance of the Work;

(ii) one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;

(iii) a trust fund administered by a trustee acceptable in all respects to EPA; and/or

(iv) a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work.

(b) Each Respondent shall provide a copy of its financial security mechanism, and any accompanying transmittal letter(s) to:

Daniela Golden  
Financial Analyst  
Superfund Remedial Section, 8ENF-RC  
US EPA, Region VIII,  
1595 Wynkoop Street  
Denver, Colorado 80202

93. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, the subject Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 92, above. In addition, if at any time EPA notifies a Respondent

that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, such Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. A Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

95. If, after the Effective Date, a Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 92 of this Section, such Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by EPA and such Respondent, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Such Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, such Respondent may seek dispute resolution pursuant to Section XXVII (Dispute Resolution). Such Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

96. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, a Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

## **SECTION XXIX**

### **MODIFICATIONS**

97. The RPM may make modifications to any plan, schedule, work plan or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

98. If a Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 97.

99. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.



## **SECTION XXX**

### **ADDITIONAL REMOVAL ACTION**

100. Subject to Respondents' right to elect not to perform the removal action Work identified in the Action Memorandum, and as set forth in paragraph 74 (*Stipulated Penalty Exception*), if EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify the subject Respondent of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, such Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Sections IX and X (EE/CA Work to Be Performed, Performance of Removal) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Section XII, Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the RPM's authority to make oral modifications to any plan or schedule pursuant to Section XXIX (Modifications).

## **SECTION XXXI**

### **NOTICE OF COMPLETION OF WORK**

101. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post-removal site controls, payment of Future Response Costs, or record retention, EPA will provide written notice to each Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify the Respondent performing the Work task pursuant to the document attached as Appendix E, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. The subject Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by the subject Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

## **SECTION XXXIII**

### **ADMINISTRATIVE RECORD**

103. EPA will determine the contents of the administrative record file for selection of the removal action. Respondents shall submit to EPA documents developed during the course of the EE/CA upon which selection may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local or other

federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondents shall establish a community information repository at or near the Site, to house one copy of the administrative record.

#### **SECTION XXXIV**

##### **INTEGRATION/APPENDICES**

104. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A: Site Map  
Appendix B: EE/CA Work Plan  
Appendix C: Map of Prospector Square  
Appendix D: Map of Silver Maple Claims and Middle Reach  
Appendix E: Work Scenario  
Appendix F: Repository Rules and Regulations  
Appendix G: Map of Area to be Remediated using Asarco Funds

#### **SECTION XXXV**

##### **EFFECTIVE DATE**

105. This Settlement Agreement shall be effective the day upon which this Settlement Agreement has been signed by all three EPA officials[, by officials of BLM, and the State of Utah?].

The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

Agreed this \_\_\_\_ day of \_\_\_\_\_, 2011.

FOR RESPONDENT PARK CITY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

FOR RESPONDENT UPCM:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

By:

\_\_\_\_\_ Date: \_\_\_\_\_

Title  
State of Utah

By:

\_\_\_\_\_ Date: \_\_\_\_\_

Title  
Bureau of Land Management

It is so Ordered and Agreed this \_\_\_\_ day of \_\_\_\_\_, 2011.

By:

\_\_\_\_\_  
Date: \_\_\_\_\_  
Matthew Cohn, Supervisory Attorney  
Legal Enforcement Program  
U.S. Environmental Protection Agency, Region  
8  
1595 Wynkoop Street  
Denver, CO 80202-1129

By:

\_\_\_\_\_  
Date: \_\_\_\_\_  
Kelcey Land, Acting Director  
KCRA & CERCLA Technical Enforcement  
Program  
U.S. Environmental Protection Agency, Region  
8  
1595 Wynkoop Street  
Denver, CO 80202-1129

By:

\_\_\_\_\_  
Date: \_\_\_\_\_  
Bill Murray, Director  
Superfund Remedial Response Program  
U.S. Environmental Protection Agency, Region  
8  
1595 Wynkoop Street  
Denver, CO 80202-1129

EFFECTIVE DATE: \_\_\_\_\_

~~DRAFT THIS DRAFT IS PROVIDED FOR UNITED STATES~~

~~SETTLEMENT PURPOSES ONLY AND HAS NOT BEEN REVIEWED OR  
APPROVED BY ANY PARTY. PARAGRAPH NUMBERS AND CITATIONS WILL BE  
CORRECTED AFTER NEGOTIATIONS.~~

~~UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8~~

~~AND~~

~~UNITED STATES BUREAU OF LAND MANAGEMENT~~

~~IN THE MAHER OF:~~

~~)~~

~~ADMINISTRATIVE SETTLEMENT~~

~~AGREEMENT AND ORDER ON~~

~~)~~

~~Park City Municipal Corporation and ) United Park City Mines Company, )~~

~~)~~

ENVIRONMENTAL PROTECTION AGENCY

REGION 8

AND

UNITED STATES BUREAU OF LAND MANAGEMENT

IN THE MATTER OF:

Richardson Flat Tailings Site

Operable Unit #3

Park City, Utah

Park City Municipal Corporation and

United Park City Mines Company,

Respondents

Proceeding Under Sections 104, 106(a),

) ADMINISTRATIVE SETTLEMENT

) AGREEMENT AND ORDER ON

) CONSENT FOR EE/CA INVESTIGATION

) AND REMOVAL ACTION

)

)

)

)

)

)

)

) U.S. EPA Region VIII

107 and 122 of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act, as amended,  
42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

---

) CERCLA Docket No.

)

)

)

)

## TABLE OF CONTENTS

<u>SECTION</u>	<u>HEADING</u>	<u>PAGE</u>
<u>SECTION I</u>	<u>JURISDICTION AND GENERAL PROVISIONS .....</u>	<u>1</u>
<u>SECTION II</u>	<u>PARTIES BOUND.....</u>	<u>2</u>
<u>SECTION III</u>	<u>STATEMENT OF PURPOSE .....</u>	<u>2</u>
<u>SECTION IV</u>	<u>DEFINITIONS .....</u>	<u>3</u>
<u>SECTION V</u>	<u>FINDINGS OF FACT .....</u>	<u>6</u>
<u>SECTION VI</u>	<u>CONCLUSIONS OF LAW AND DETERMINATIONS .....</u>	<u>8</u>
<u>SECTION VII</u>	<u>SETTLEMENT AGREEMENT AND ORDER .....</u>	<u>9</u>
<u>SECTION VIII</u>	<u>DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR .....</u>	<u>10</u>
<u>SECTION IX</u>	<u>EE/CA WORK TO BE PERFORMED .....</u>	<u>13</u>
<u>SECTION X</u>	<u>PERFORMANCE OF REMOVAL .....</u>	<u>15</u>
<u>SECTION XI</u>	<u>SITE ACCESS AND INSTITUTIONAL CONTROLS .....</u>	<u>19</u>
<u>SECTION XII</u>	<u>EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS .....</u>	<u>23</u>
<u>SECTION XIII</u>	<u>ACCESS TO INFORMATION.....</u>	<u>25</u>
<u>SECTION XIV</u>	<u>RECORD RETENTION .....</u>	<u>26</u>
<u>SECTION XV</u>	<u>COMPLIANCE WITH OTHER LAWS .....</u>	<u>27</u>
<u>SECTION XVI</u>	<u>EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES .....</u>	<u>27</u>
<u>SECTION XVII</u>	<u>PAYMENT OF RESPONSE COSTS.....</u>	<u>28</u>
<u>SECTION XVIII</u>	<u>DISPUTE RESOLUTION.....</u>	<u>30</u>
<u>SECTION XIX</u>	<u>FORCE MAJEURE.....</u>	<u>32</u>
<u>SECTION XX</u>	<u>STIPULATED PENALTIES.....</u>	<u>33</u>
<u>SECTION XXI</u>	<u>COVENANT NOT TO SUE BY EPA AND BLM.....</u>	<u>37</u>



SECTION XXII	RESERVATIONS OF RIGHTS BY EPA .....	37
SECTION XXIII	COVENANT NOT TO SUE BY RESPONDENTS- 38	
SECTION XXIV	OTHER CLAIMS .....	40
SECTION XXV	CONTRIBUTION .....	40
SECTION XXVI	INDEMNIFICATION.....	41
SECTION XXVII	INSURANCE .....	41
SECTION XXVIII	FINANCIAL ASSURANCE.....	42
SECTION XXIX	MODIFICATIONS.....	43
SECTION XXX	ADDITIONAL REMOVAL ACTION .....	44
SECTION XXXI	NOTICE OF COMPLETION OF WORK.....	44
SECTION XXXIII	ADMINISTRATIVE RECORD.....	44
SECTION XXXIV	INTEGRATION/APPENDICES .....	45
SECTION XXXV	EFFECTIVE DATE .....	45

## I. JURISDICTION AND GENERAL PROVISIONS

### JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by Park City Municipal Corporation and United Park City Mines Company ("Respondents") and the United States Environmental Protection Agency ("EPA"), the Bureau of Land Management ("BLM"), and the State of Utah (collectively, "the Parties"). This Settlement Agreement provides for the preparation and performance of an Engineering Evaluation/Cost Analysis ("EE/CA") and non-time critical removal action ("removal action") by each of the Respondents at or in connection with the Richardson Flat Tailings Site, Operable ~~Unit~~Units #3 and #4, generally located near Park City, Utah (the "Site"), depicted generally in blue on the map attached as Appendix A and generally described as the Middle Reach of Silver Creek, three parcels in Lower Silver Creek (OU 2) north of the Promontory Road in the southeast quarter of section 15 and the southwest quarter of section 14 township 1 south range 4 east SLB&M and two parcels of land in the northwest quarter of section 26 township 1 south range 4 east SLB & M, and the reimbursement of ~~past~~, interim and future response costs incurred by EPA in connection with the ~~EE/CA~~EE/CA and removal action.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator ~~of EPA~~of EPA Region 8 to the Assistant Regional Administrator, Office of Ecosystem Protection and Remediation by EPA Delegation No. 14-14-C. ~~DOI~~ DOI delegation language?

3. In accordance with Sections 104(b)(2) and ~~1220~~122(j)(1) ~~of CERCLA~~of CERCLA, 42 U.S.C. §§ 9604(b)(2) and ~~96220~~9622(j)(1), on September 28, 2010, EPA formally notified the United States Department ~~of the~~of the Interior and the Utah Department of Environmental Quality ~~of the~~of the release of hazardous substances that may have resulted in injury to the natural resources under Federal and State trusteeship at Operable ~~Unit~~Units #3 and #4 of the Richardson Flat Tailings Site and of negotiations with potentially responsible parties.

4. The Parties recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Furthermore, Respondents do not admit any responsibility or liability for environmental or contaminant issues at the Site, or within either the Silver Creek watershed or the East Canyon Creek watershed. Any studies evaluations, determinations, data and sample gathering, removal actions, funding or other activities performed pursuant to or in connection with this Settlement Agreement, and the results of all such activities, are exclusively for settlement purposes and shall not be used for any other purpose whatsoever (whether in relation to the Site or otherwise), nor shall they be given any

operative, substantive, circumstantial or actual significance, deference, weight or inference in any proceeding, action, undertaking, procedure or process, whether formal, informal, administrative, municipal, judicial, or otherwise (whether in relation to the Site or otherwise). Nothing in this Agreement may be used as evidence or support, whether direct, indirect, circumstantial or actual, for any claims, causes of action, proceedings or undertakings, whether judicial, administrative, municipal or otherwise. Respondents do not admit, and retain the right to controvert in any subsequent actions, undertakings or proceedings, whether formal, informal, administrative, municipal, judicial or otherwise, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections V and VI of this Settlement Agreement. Respondents agree not to assert any claims for liability, or otherwise, against each other based on any provision of this Agreement, or the performance of any studies, evaluations, determinations, data gathering, removal actions, funding or other activities performed pursuant to or in relation to, this Settlement Agreement. The Parties agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

## H. PARTIES BOUND

5. The Parties/Respondent Park City] acknowledges and agrees that Respondent UPCM has no liability or responsibility for water, water treatment or water quality at the Site or within either the Silver Creek watershed or the East Canyon Creek watershed, or anywhere tributary to the foregoing, including, by way of example and not by way of limitation, Empire Canyon, Empire Creek, Thaynes Canyon Creek, Judge Tunnel, Spiro Tunnel, and Prospector Drain.

## SECTION II

### PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon the Parties and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Each Respondent shall be responsible for any noncompliance with requirements of this Settlement Agreement for ~~which~~which it is either individually or jointly responsible.

8. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the Parties to this Settlement Agreement. ~~III. STATEMENT OF PURPOSE~~

### SECTION III

#### STATEMENT OF PURPOSE

9. In ~~entering~~entering into this Settlement Agreement, the objectives of the Parties are: (a) to determine the source, nature and extent of contamination and contaminant transport mechanisms and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from each operable unit that comprises the Site, by conducting an Engineering Analysis as more specifically set forth in the EE/CA Work Plan that is specific to each operable unit attached as Appendix B and B1 to this Settlement Agreement; (b) to ~~identify~~identify and evaluate ~~alternatives~~alternatives to prevent, mitigate or otherwise respond to or ~~remedy~~remedy any release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a Cost Analysis specific to each operable unit as more specifically set forth in the EE/CA Work Plan Plans attached as Appendix B and B1 to this Settlement Agreement; (c) to conduct all actions necessary to ~~implement~~implement the non-time critical removal action remedy selected in EPA's Action Memorandum for each operable unit, as to be set forth in a removal action Statement of Work and Work Plan specific to each operable unit of the site; and (d) to recover ~~response and oversight~~interim and future response and oversight costs incurred by EPA with respect to this Settlement Agreement.

10. The Work conducted under this Settlement Agreement is subject to approval by EPA and, with respect to the Silver Maple Claims portion of the Site, the concurrence of BLM, and shall provide all appropriate and necessary information to assess Site conditions and evaluate ~~alternatives~~alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondents shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidance, policy, and procedure.

IV. DEFINITIONS

### SECTION IV

#### DEFINITIONS

~~H.~~ 11. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"          (a)          "Action Memorandum"" shall mean the EPA Site Action Memorandum that will be issued by EPA, with the concurrence of BLM regarding as it relates to the Silver Maple Claims portion of the Site, at the conclusion of the EE/CA for each operable unit.

(a) "Asarco Funds" shall mean any funds obtained through the Asarco bankruptcy that represent Asarco's contribution for their past operations in OU 2 and OU 3.

"(b) "BLM" shall mean the United States Bureau of Land Management and any successor departments or agencies of the United States.

"(b) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"(c) "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"(d) "Development Waste" shall mean all soils contaminated by mining activities that Respondent Park City PCMC seeks to dispose of, but which do not arise from the Richardson Flat Superfund Site, OUs 1-4. [needs work]

"(e) "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXV.

"(f) "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"(g) "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry ("ATSDR") costs, the costs incurred pursuant to Paragraph 34 (costs and attorneys' fees and any monies paid to secure access, including the amount of just compensation), Paragraph 53 (emergency response), and Paragraph 79 (work takeover).

"(h) "Institutional Controls" shall mean proprietary controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for exposure to Waste Materials at the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the removal action; and/or (c) provide information intended to modify or guide human behavior at the Site.

"(i) "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect

at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. "(j) "Interim Response Costs"" shall mean all costs, including direct and indirect costs, (a) paid by the ~~United~~United States in connection with the Site between **[insert date identified in Past Response Costs definition]** and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

~~k. Prospector~~ (k) "Prospector Square" shall mean that area identified by EPA and the State of Utah as a point source pursuant to the Clean Water Act, depicted generally on the map attached as Appendix C, and that has caused, or has ~~the~~the potential to, cause, hazardous substances to become located at the Site.

~~k.~~ (k) "Material Defect" shall mean [need to fill in]."

(l) "Middle Reach" shall mean that portion of the Site, consisting of approximately 6382 acres, that ~~is near~~starts at the eastern end of the Prospector Square development in Park City, Utah, and ~~directly downgradient and contiguous to~~ includes the Silver Maple Claims portion of the Site, extends to U. S Highway 40 and is ~~depicted~~depicted generally in green on the map attached as Appendix D.

k. "(m) "National Contingency Plan"" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

~~k. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through [insert date of most recent cost update], plus Interest on all such costs through such date.~~

(n) "Non-Development Waste" shall mean all other Waste Material that is not included in the definition of Development Waste above.

(o) "Oversight Costs" shall mean that portion of Future and Interim Response Costs incurred by EPA in monitoring and supervising Respondents' performance of the removal actions agreed to in this Settlement Agreement to determine whether such performance is consistent with the requirements of this Settlement Agreement, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Settlement Agreement, as well as costs incurred in overseeing implementation of the removal action; however, Oversight Costs do not include, inter alia, (1) the cost of activities by EPA pursuant to Section XVI (Emergency Response and Notification of Releases) of this Settlement Agreement; (2) the cost of enforcing the terms of this Settlement Agreement, including all costs incurred in connection with Dispute Resolution pursuant to Section XVIII (Dispute Resolution); and (3) the cost of securing access under Sections XI (Site Access) and XIII (Access to Information).

k. " (o) "Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

m. " (p) "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

n. " (q) "Parties" shall mean EPA, 8LMBLM, the State of Utah and Respondents.

q. " (r) "Removal Action" shall mean all actions ~~necessary~~necessary to implement the non-time critical removal action ~~remedy~~remedies selected in EPA's Action Memorandum decision document at the conclusion of the Site ~~EE/CA~~each operable unit EE/CA, as to be set forth in a removal action Statement of Work and Work Plan for each respective operable unit.

r. " (s) "Respondents" shall mean Park City Municipal Corporation and United Park City Mines Company.

r. " (t) "Repository" shall mean either the existing repository at Richardson Flat OU 1 or a new repository to be constructed on portions of parcels SS-28-A-1-X and SS-27-B-X.

u. " (u) "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

I. " (v) "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXXIV). In the event of a conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

s. " (w) "Silver Maple Claims" shall mean that portion of the Site, consisting of approximately 34 acres of the most upgradient area ~~of the~~of the Site, that is near the eastern end of the Prospector Square development in Park City, Utah, that is in the custody and control of, and is managed by, the Bureau of Land Management and is depicted generally in brown on the map attached as Appendix D.

" (x) "Site" shall mean the Richardson Flat Tailings Superfund Site, Operable Units #3 & #4, encompassing approximately ~~1010487~~1010487 acres more or less located east of Park City and comprising ~~of specific~~of specific areas along the Silver Creek, in Summit County, Utah, and depicted generally in blue on the map attached as Appendix A. and generally described as the Middle Reach of Silver Creek, three parcels in Lower Silver Creek (OU 2) north of the Promontory Road in the southeast quarter of section 15 and the southwest quarter of section 14 township 1 south range 4 east SLB&M with parcel numbers SS-28-A-1-X, SS-27-B-X, SS-28-A-X and two parcels of land in the northwest quarter

of section 26 township 1 south range 4 east SLB & M with parcel numbers SS-56-A-1 and SS-56. The Site shall also include any areas in close proximity to the property previously described and necessary to accomplish the response action goals.

"(y) "State" shall mean the Utah Department of Environmental Quality and the Utah Division of Parks and Recreation.

"(z) "Statement of Work" or "SOW" shall mean any EPA Statement of Work developed after issuance of EPA's Site Action Memorandum ~~to that will~~ govern the implementation of the Site removal action. The Statement of Work will be incorporated into this Settlement Agreement and will be an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Order. There will be separate SOWs for each OU. [UPCM shall be responsible for drafting the SOW for OU3.]

"(aa) "Waste Material" shall mean ~~1~~(1) any "hazardous substance" under Section 101 (14) of CERCLA, 42 U.S.C. § 9601(14) and ~~2~~(2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

"(bb) "Work" shall mean all activities Respondents are required to perform under any EPA Statement of Work or Work Plan and this Settlement Agreement, except those required by Section XIV (Retention of Records). ~~V. FINDINGS OF FACT~~

## SECTION V

### FINDINGS OF FACT

~~H. 11. The Richardson Flat Tailings Superfund Site, Operable Unit #3, Units #3 and #4, encompasses approximately 1010 acres located east of Park City in areas along the Silver Creek, in Summit 487 acres in multiple parcels located east and north of Park City in areas along the Silver Creek, in Summit County, Utah, and is depicted generally in blue on the map attached as Appendix A. The Site can be delineated into three areas, which, beginning at the southern and most upgradient upstream portion of the Site, are as follows: Silver Maple Claims, Middle Reach, and parcels formerly part of Richardson Flat Tailings Operable Unit #2, namely, parcels SS-28-A-1-1-X, SS-27-B-X, and SS-28-B-X. SS-28-A-X located north of the Promontory road, that portion of SS-56-A-1 and SS-56 both located in the northwest quarter of section 26 T 1 S R 4E.~~

xx. The Richardson Flat Tailings Superfund Site, Operable Unit #4, includes the Prospector Drain and any areas in close proximity to ~~the property~~ the property previously described and necessary to accomplish the response action goals.

12. Mining operations within the Park City Mining District reportedly produced large quantities of ore between 1875 and 1967. These operations reportedly caused tailings and mining ~~waste~~ waste to come to be located in and along Silver Creek and at the Site.



13. Respondent United Park City Mines (UPCM) is a corporation doing business in the State of Utah and was incorporated in the State of Delaware on May 8, 1953. Respondent UPCM conducted various mining-related operations within the Park City Mining District until approximately the late 1980s. 1970 when it leased its' mining properties to Park City Ventures who then sublet these properties to Noranda Mining Incorporated in 1979. The predecessors--in -interest of Respondent UPCM also conducted mining operations in the area since starting in the late 1800s. These activities included the mining of ore from the Ontario and Daly West mines, owned by Respondent: UPCM. EPA asserts that mining waste from these operations has been carried down stream and has impacted portions of the Site.

yy. Other milling operations occurred upstream of the Site. These operations conducted by Reuben Garbett, Christian Anderson, Reuben Galvin, Nim Sweatfield, and the Park City Smelting Company were significant contributors to mining related materials being washed downstream thus impacting portions of the Site. All of these operators are PRP's under CERCLA but are no longer viable entities and are considered to be Orphan Shares.

xx. Historic mining processing operations also occurred at Prospector Square, which is just upgradient and west of the Silver Maple Claims portion of the Site. This is a historical dump area where several million tons of mill tailings have come to be located along Silver Creek. Vicinity mills, such as the Grasselli, Pacific Bridge, Park City Metals Company, Utah Ore Sampling, Peck Concentrator, and Broadwater, performed operations proximate to Prospector Square. mills operated at Prospector Square. These mills were operated by the Park City Metals Company, Grasselli Chemical, the Pacific Bridge Company and CC Broadwater Mills Company. All of these companies are PRP's under CERCLA and only Grasselli Chemical Company [is a viable entity and now owned by DuPont.]

xx. The Prospector Square area was developed by under the municipal authority of Respondent Park City Municipal Corporation (Park City) during the late 1970s and early 1980s, with dense commercial and residential buildings. Much of this new development has been built atop of tailings material. The Prospector Square drain collects was designed to collect shallow groundwater from the land prior to development. It underlies portions of the developed area. The drain but its extent and exact locations are not known. The drain's flow is unevenly split between a constructed treatment wetland and a natural wetland area near the recreation park between Prospector Square and Silver Maple Claims. An EPA estimate based on the individual data points indicates that cumulative loading for metals, for the 20 -year period of the operation of the Prospector drain, is approximately as follows: arsenic loading, 0.005 ug/l; cadmium loading, 0.932 ug/l; lead loading, 9.184 ug/l; zinc loading, 1188.8 ug/l [ too low it's more like 5000 and what is the flow???]. As all the water from the wetlands eventually flows into Silver Creek, this loading is a significant source for the metals contamination in the Creek.

15. Respondent Respondent Park City, a municipal corporation organized and existing under the laws of the State of Utah, has conducted activities associated with the above-referenced

development above-referenced development and the collection of tailings-contaminated water that ultimately discharges through a pipe located on-Site. These activities at Prospector Square have caused contamination to come to be located at the Silver Maple Claims and Middle Reach portions of the Site, as well as at other downgradient areas. -Site. These activities include the reconstruction of the Silver Creek stream channel through Prospector Square in about 1985 and reconstructing a portion of the drain pipe to accommodate the construction of a wetland treatment system in 2009. The pipe discharge point is located on land owned by Park City. These activities at Prospector Square have caused contamination to come to be located at the Silver Maple Claims and Middle Reach portions of the Site, as well as at other downgradient areas.

15. The Bureau of Land Management maintains custody and control and manages the Silver Maple Claims portion of the Site, which is depicted generally in brown on the map attached as Appendix D.

15. The Middle Reach portion of the Site is located directly downgradient of, and contiguous to, Silver Maple Claims, and is depicted generally in green on the map attached as Appendix D. Respondent Park City owns property within the portion of the Site designated as Middle Reach. Respondent United Park City Mines Company also owns property within the portion of the Site designated as the Middle Reach.

15a Several moderate to small sized mills were in operation in the Middle Reach portion of the site. Mills owned or leased by E. J. Beggs, Sherman Fargo, Phillip Morgan, Hanson Brothers and Fife, Charles D. Clegg and the Big Four Exploration Company were in operation in the Middle Reach portion of the Site. These operators are PRP's under CERCLA, are no longer viable and are considered to be Orphan Shares.

16. The Site includes approximately 322 acres along the flood plain of Silver Creek that were formerly part of Operable Unit #2 of the Richardson Flat Tailings Site, as well as the Prospector Drain and any areas necessary to accomplish the response action goals. The 322 acres that were formerly part of OU 2 are lands that were once under lease and operated by Asarco. This area is now to be addressed solely as part of this Site and Settlement Agreement and can be done so using Asarco Funds. Soil samples in this most downgradient portion of the Site have indicated high concentrations of lead (26,200 mg/kg), arsenic (745 mg/kg), zinc (18,700 mg/kg) and cadmium (119 mg/kg). Surface water sampling has identified elevated levels of cadmium (47.5 ug/l), lead (40 ug/l) and zinc (9,310 ug/l) in certain stretches of Silver Creek. The Echo Reservoir, a source of drinking water, is located 12.5 miles downstream of this area of the Site. The primary land use on this portion of the Site is commercial livestock grazing; however, a recreational use is in close proximity. A former rail line that runs across this area (as well as through the other portions of the Site) has been converted into a recreational trail that is now used extensively for hiking, biking, observing wildlife, and accessing Silver Creek for fishing.

17. Respondent Park City owns three Site parcels formerly part of Operable Unit #2, now part of Operable Unit #3, namely, parcels SS-28-A-1-X, SS-27-B-X, and SS-28-A-X. These parcels comprise approximately 180 acres of the northernmost portion of the Site, which

includes approximately 50 acres of contaminated tailings located in floodplain areas. Respondent Park City also owns the Prospector Drain.

xx. Directly upgradient of the portions of the Site that were formerly part of Operable Unit #2, lies Operable Unit #1 of the Richardson Flat Tailings Site. Respondent UPCM, its predecessors and lessees conducted mining-related operations at Operable Unit #1, where approximately seven million tons of tailings have come to be located. Respondent UPCM continues to own, and is in the process of implementing remedial actions at Operable Unit #1 under a federal Consent Decree (Civil Action # 2:07-cv-00642-BSJ).

xx. In the broader Empire Canyon CERCLIS site, UPCM has undertaken CERCLA response activities under the supervision of EPA. UPCM entered into two Administrative Orders on Consent with EPA. The first, "Empire Canyon Administrative Order on Consent for Removal Action," EPA Docket No. CERCLA-08-2002-05 (EPA date-stamped May 14, 2002), required United Park to conduct an EE/CA for the Empire Canyon site. United Park's EE/CA was completed and the report was submitted to EPA on June 10, 2003. EPA then issued its Action Memorandum for the Empire Canyon site on November 6, 2003. Thereafter, United Park entered into a second Administrative Order, "Empire Canyon Administrative Order on Consent for Non-Time Critical Removal Action," EPA docket No. CERCLA-08-2004-0003 (EPA date-stamped December 16, 2003). The second Administrative Order on Consent required UPCM to conduct defined removal activities as set forth in relevant AOC deliverables, including the "Empire Canyon Non-Time Critical Removal Action Work Plan" (EPA date-stamped March 15, 2004). The work required under the Action Memorandum was completed in 2007 and EPA acknowledged the completion of this work by a letter dated September 5, 2008. UPCM also submitted an Operations and Maintenance plan on June 19, 2009, which was approved by EPA on October 16, 2009.

15. The portion of Silver Creek that flows through the Site (approximately 5 miles of stream reach) is bordered by wetlands. The surface water samples indicate that cadmium, lead, and zinc concentrations exceed water quality standards for protection of aquatic life. A drinking water supply intake is located within 12.5 miles of the Site. Exposed tailings material on-Site presents the potential pathway of airborne migration of contaminants such as lead and arsenic however there is no evidence that this is occurring. Further, potential Site pathways exist in the form of dermal exposure and ingestion due to risks associated with potential contact with these materials and these exposed tailings. These potential exposure pathways for lead, arsenic, and cadmium may impact human health and the environment.

17. Depending on the level of exposure, lead can adversely affect the nervous system, kidney function, immune system, reproductive and developmental systems and the cardiovascular system. Lead is persistent in the environment and accumulates in soils and sediments. Ecosystems near sources of lead demonstrate a wide range of adverse effects including loss of biodiversity, changes in community composition, decreased growth and reproductive rates in plants and animals, and neurological effects in vertebrates. Cadmium and its compounds are extremely toxic even in low concentrations, and will bioaccumulate in organisms and ecosystems.

18. Operable Units # 2, #3 and #4 of the Richardson Flat Tailings Site are not proposed for listing on the National Priorities List ("NPL"). Operable Unit #1 of the Richardson Flat Tailings Site, referenced above, was originally proposed for inclusion on the NPL on June 24, 1988. Due to scoring issues and comments received from Respondents and others during the public comment period, Operable Unit #1 was removed from NPL consideration in February 1991. Operable Unit #1 was re-proposed for the NPL on February 7, 1992, however, no action has been taken with regard to this proposed listing, or the subsequently identified Operable Units #2, #3, or #4.

xx. The Utah Division of Parks and Recreation was deeded the Union Pacific Railroad right-of-way (which runs along Silver Creek through OU#2 and OU#3) on May 11, 1989 pursuant to a decision of the Interstate Commerce Commission. The purpose of the conveyance was to establish interim trail use and railbanking pursuant to the National Trails System Act, 16 U.S.C. § 1247 et seq.

## SECTION VI

### CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the Findings of Fact set forth above, and the Administrative Record supporting these response actions, EPA has determined that:

(a) Richardson Flat Tailings Site, Operable Units #3 and #4, are "facilities" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

(b) The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

(c) The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

(d) Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

(e) Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(i) Respondent Park City is an "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(ii) Respondents were the "owners" and/or "operators" of the facility at the time of disposal of hazardous substances at the facility, as defined by

Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

(iii) Respondents arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

(g) The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective removal action and minimize litigation, 42 U.S.C. § 9622(a).

(h) EPA has determined that each Respondent is qualified to conduct the Work activities specifically assumed by such Respondent pursuant to the document attached as Appendix E, within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work, properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement Agreement.

## **SECTION VII**

### **SETTLEMENT AGREEMENT AND ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Parties shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## **SECTION VIII**

### **DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR**

28. EE/CA. All EE/CA Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel.

(a) Respondent UPCM has notified EPA that it intends to use the following personnel in carrying out such work: United Park City Mines personnel under the direction of Kerry C. Gee, and Resource Management Consultants, Inc., under the direction of James Fricke. EPA hereby approves Respondent's selection of the foregoing contractors and personnel. During the course of the EE/CA, Respondent shall notify EPA in writing of any changes or additions in the contractors or personnel used to carry out such Work, providing names, titles, and qualifications. EPA shall have the right to disapprove changes and additions to contractors or personnel in its discretion. If EPA disapproves in writing of any person's or contractors' technical

qualifications, Respondent shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA disapproves of designated Contractors or personnel, Respondent shall retain different Contractors or personnel and shall notify EPA of the name(s), address(es), telephone number(s) and qualifications within 15 days following EPA's disapproval.

(b) Respondent UPCM has designated Kerry C. Gee as its Project Coordinator who shall be responsible for administration of all EE/CA actions by Respondent UPCM required by this Settlement Agreement. EPA hereby approves Respondent's selection of the foregoing Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA 30 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 15 days following EPA's disapproval. EPA shall direct all submissions required by this Settlement Agreement to the Project Coordinator at:

Kerry C. Gee  
Vice President  
United Park City Mines Co.  
Box 1450  
Park City, Utah 84060  
Office: 435-333-6601  
Cell: 801-694-0382

(c) Within 30 days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondent Park City shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. With respect to any proposed contractor, Respondent Park City shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995, or more recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent Park City shall be subject to EPA's review, for verification that such persons meet minimal technical background and experience requirements. This Settlement Agreement is contingent on Respondent Park City's demonstration to EPA's satisfaction that it is qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, Respondent Park City shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct the EE/CA and to seek reimbursement of costs and penalties from Respondent Park City. During the

course of the EE/CA, Respondent Park City shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

(d) Within 15 days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondent Park City shall designate a Project Coordinator who shall be responsible for administration of all removal action Work required of Park City by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of a Respondent's designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, the subject Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 15 days following EPA's disapproval. Receipt by Respondent's Project Coordinator shall constitute receipt by Respondent of any notice or communication from EPA relating to this Settlement Agreement.

13. Removal Action. All Work conducted under this Settlement Agreement in performance of the removal action shall be under the direction and supervision of qualified personnel.

(a) Respondent UPCM has notified EPA that it intends to use the following personnel in carrying out such work: United Park City Mines personnel under the direction of Kerry C. Gee, and Resource Management Consultants, Inc., under the direction of James Fricke. EPA hereby approves Respondent's selection of the foregoing contractors and personnel. During the course of the EE/CA, Respondent shall notify EPA in writing of any changes or additions in the contractors or personnel used to carry out such Work, providing names, titles, and qualifications. EPA shall have the right to disapprove changes and additions to contractors or personnel in its discretion. If EPA disapproves in writing of any person's or contractors' technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA disapproves of designated Contractors or personnel, Respondent shall retain different Contractors or personnel and shall notify EPA of the name(s), address(es), telephone number(s) and qualifications within 15 days following EPA's disapproval.

(b) Respondent UPCM has designated Kerry C. Gee as its Project Coordinator who shall be responsible for administration of all removal actions by Respondent UPCM required by this Settlement Agreement. EPA hereby approves Respondent's selection of the foregoing Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA 30 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 15 days following EPA's

disapproval. EPA shall direct all submissions required by this Settlement Agreement to the Project Coordinator at:

Kerry C. Gee  
Vice President  
United Park City Mines Co.  
Box 1450  
Park City, Utah 84060  
Office: 435-333-6601  
Cell: 801-694-0382

(c) Within 30 days of EPA's issuance of the Action Memorandum, and before the removal action Work outlined below begins, Respondent Park City shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. With respect to any proposed contractor, Respondent Park City shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995, or more recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent Park City shall be subject to EPA's review, for verification that such persons meet minimal technical background and experience requirements. This Settlement Agreement is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, Respondent Park City shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement with respect to Respondent Park City, to conduct the removal, and to seek reimbursement of costs and penalties from such Respondent. During the course of the removal, Respondent Park City shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

(d) Within 15 days of EPA's issuance of the Action Memorandum, Respondent Park City shall designate a Project Coordinator who shall be responsible for administration of all removal action Work required of Respondent Park City by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of a Respondent's designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent Park City shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 15 days following EPA's



disapproval. Receipt by Respondent's Project Coordinator shall constitute receipt by Respondent of any notice or communication from EPA relating to this Settlement Agreement.

15. EPA has designated Kathryn Hernandez of EPA's Ecosystems Protection and Remediation Office, Region 8, as its Project Coordinator. EPA will notify Respondent of a change of its designated Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the Project Coordinator at:

Kathryn Hernandez  
Remedial Project Manager  
Superfund Remedial Section, 8EPR-RA  
US EPA, Region VIII,  
1595 Wynkoop Street  
Denver, Colorado 80202

17. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work.

17. EPA shall arrange for a qualified person to assist in its oversight and review of both the conduct of the EE/CA and the removal action, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the EE/CA or removal action Work Plan.

17. EPA, BLM and the State shall be granted sole oversight authority over Respondents with relation to the Work to be performed pursuant to this Settlement Agreement, and no municipal action shall be deemed as guarantying any municipal oversight, approval authority or review rights with regard to the matters discussed in this Settlement Agreement.

18. EPA and Respondents shall have the right, subject to Paragraph 13, to change their respective designated RPM or Project Coordinator. Respondents shall notify EPA 30 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice. If EPA disapproves of the change in any designated Project Coordinator, the subject Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 15 days following EPA's disapproval.

## SECTION IX

### EE/CA WORK TO BE PERFORMED

19. Respondent Park City shall conduct an EE/CA addressing discharges from the Prospector Drain (OU#4) and Respondent UPCM shall conduct an EE/CA for OU#3. Each Respondent shall conduct the Work activities related to performance of the EE/CA in accordance with the provisions of this Settlement Agreement, the attached Work Plans developed for performance of each EE/CA, CERCLA, the NCP, and EPA guidance. The Engineering Evaluation ("EE") shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Cost Analysis ("CA") shall determine and evaluate (based on treatability testing, where appropriate) alternatives for the removal action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to; the range of alternatives described in the NCP, and shall include removal actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). Upon request by EPA, Respondents shall submit in electronic form all portions of any plan, report or other deliverable such Respondent is required to submit pursuant to provisions of this Settlement Agreement.

20. Upon receipt of the draft CA report submitted by each Respondent (which shall contain such Respondent's evaluation of the durability, reliability and effectiveness of any proposed Institutional Control), EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the durability, reliability and effectiveness of any proposed Institutional Controls.

#### 21. Modification of the EE/CA Work Plan.

(a) In the event of unanticipated or changed circumstances at the Site, Parties shall notify the EPA Project Coordinator within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the EE/CA Work Plan, EPA shall modify or amend the EE/CA Work Plan in writing accordingly. Respondents shall perform the EE/CA Work Plan as modified or amended.

(b) EPA may determine that in addition to tasks defined in the initially approved EE/CA Work Plan, other additional Work may be necessary to accomplish the objectives of the EE/CA. Respondents agree to perform these actions in addition to those required by the initially approved EE/CA Work Plan, including any approved modifications, if EPA determines that such actions are necessary to complete an EE/CA.

(c) Respondents shall confirm their willingness to perform the additional Work in writing to EPA within 7 days of receipt of the EPA request. If either Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, such Respondent may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). The EE/CA Work Plan shall be modified in accordance with the final resolution of the dispute.

(d) Respondents shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the EE/CA Work Plan or written EE/CA Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

(e) Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

22. *Meetings.* Respondents shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the EE/CA. In addition to discussion of the technical aspects of the EE/CA, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

23. *EE/CA Progress Reports.* In addition to the plans, reports and other deliverables set forth in this Order, Respondents shall provide to EPA quarterly progress reports by the 15th day of the following month. At a minimum, with respect to the preceding quarter, these progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during that quarter, (2) include all results of sampling and tests and all other data received by Respondents, (3) describe Work planned for the next two quarters with schedules relating such Work to the overall project schedule for EE/CA completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

24. *Quality Assurance.* Respondents shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the Work Plan, the QAPP and guidances identified therein. Respondents will assure that field personnel used by such Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories which have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

25. *Sampling.* (a) All results of sampling, tests, modeling, or other data (including raw data) generated by Respondents, or on their behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA, BLM and the State in the next quarterly progress report as described in Paragraph 30 of this Settlement Agreement. EPA will make available to Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

(b) Respondents shall verbally notify EPA, BLM and the State at least 30 days prior to conducting significant field events as described in the EE/CA Work Plan or Sampling and Analysis Plan. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by EPA, BLM and the State (and their authorized representatives) of any samples collected in implementing this Settlement Agreement. All split samples of Respondents shall be analyzed by the methods identified in the QAPP.

xx. Respondents shall submit to EPA, BLM and the State 2 copies of all plans, reports or other submissions required by this Settlement Agreement, the EE/CA Work Plan, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

xx. Each Respondent shall be given the opportunity to review and comment upon the other's draft EE/CA prior to EPA approval of that document. EPA will consider each Respondent's comments and provide a written response to such comments. Respondents comments and EPA's comments shall be placed in the administrative record for the Site.

## SECTION X

### PERFORMANCE OF REMOVAL

26. Respondents shall conduct the Work activities related to performance of the removal action as specifically assumed by such Respondent pursuant to Paragraph 19. Each Respondent shall perform, at a minimum, all actions necessary to accomplish the tasks set forth as their responsibility to implement the removal action remedy selected in EPA's Action Memorandum. The actions to be implemented generally include, but are not limited to, the activities that will be identified in the removal action Statement of Work and Work Plan, as well as the activities identified in this Section.

26. *Removal Action Work Plan and Implementation.* (a) Within 30 days after EPA issues the Site Action Memorandum, each Respondent shall submit to EPA for approval a draft Work Plan for performance of their identified tasks related to implementation of the removal action. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

(b) EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, the subject Respondent shall submit a revised draft Work Plan within 15 days of receipt of EPA's notification of the required revisions. Such Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

(c) Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 36(b).

27. *Removal Health and Safety Plan.* Within 30 days after EPA issues the Site Action Memorandum, each Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Each Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

28. *Removal Quality Assurance and Sampling.* (a) Each Respondent shall prepare a Quality Assurance Project Plan ("QAPP") in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/-98/018, February 1998).

(b) All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Each Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Each Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Each Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

(b) Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

(c) Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 30 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the subject Respondent to take split or duplicate samples of any samples it takes as part of its oversight of subject Respondent's implementation of the Work.

29. *Removal Reporting.* (a) Each Respondent shall submit a quarterly written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement on every 15th day of January, April, July, and October after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

(b) Each Party who owns or controls property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Each Party who owns or controls property at the Site also agrees to require that their successors comply with the immediately preceding sentence and Sections XI (Site Access) and XIII (Access to Information).

31. *Final Removal Report.* Within 30 days after completion of all Work required by this Settlement Agreement, each Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

32. Each Respondent shall submit to EPA 2 copies of all plans, reports or other submissions required by this Settlement Agreement, the removal Statement of Work, or any approved work plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

32. *Off-Site Shipments.* (a) Each Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written

notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(i) Each Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(ii) The identity of the receiving facility and state will be determined by each Respondent following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 32(a) and (b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

(b) Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, each Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121 (d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

xx. If the "Pace" properties are ultimately chosen as an on-site repository, Respondent Park City shall donate those parcels to Respondent UPCM for this purpose and Respondent UPCM shall operate the repository to accomplish the goals of this response action. EPA will construct the repository using Asarco funds. Respondent Park City shall be allowed to dispose of 362,000 cubic yards of Development Waste in the repository, with a required tipping fee of \$ \_\_\_\_\_ per cubic yard paid to Respondent UPCM. Respondent Park City shall also be allowed to dispose of \_\_\_\_\_ cubic yards of Non-Development Waste in the repository, with a required tipping fee of \$ \_\_\_\_\_ per cubic yard paid to Respondent UPCM.

xx. The rules and regulations regarding the operation of the repository mentioned in the immediately preceding paragraph are attached as Appendix F and incorporated herein as part of this Settlement Agreement. The rules preempt and prohibit any additional municipal laws, ordinances, zoning regulations or other local governmental controls attempting to regulate, or effect regulation of, the repository.

[xx. EPA will fund cleanup of the area identified in Appendix G using Asarco funds.]

## SECTION XI

### SITE ACCESS AND INSTITUTIONAL CONTROLS

33. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by either of the Respondents to this Settlement Agreement:

(a) such Respondent shall, commencing on the Effective Date of this Settlement Agreement, provide the United States, BLM, and the State, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, which also would, as a threshold, be required to satisfy reasonable steps pursuant to 42 U.S.C. § 9601(40), to conduct any activity regarding this Settlement Agreement including, but not limited to, the following activities:

(i) Monitoring the Work;

(ii) Verifying any data or information submitted to the United States, BLM, or the State;

(iii) Conducting investigations regarding contamination at or near the Site;

(iv) Obtaining samples;

(v) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(vi) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(vii) Implementing the Work pursuant to this Settlement Agreement;

(viii) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section (Access to Information);

(ix) Assessing Respondents' compliance with this Settlement Agreement;

(x) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Settlement Agreement; and

(xi) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

(b) commencing on the effective date of this Settlement Agreement, Respondents shall not use the Site, or such other real property, in any manner that EPA determines will pose an



unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the response measures to be performed pursuant to this Settlement Agreement. Such restrictions shall be considered during the conduct of the Site EE/CA and set forth in the Site Action Memorandum; and

(c) such Respondents shall:

(i) execute and record in the Recorder's Office of Summit County, State of Utah, pursuant to Utah Code Ann. §§ 57-25-101 et seq., Proprietary Controls that: (i) grant a right of access to conduct any activity regarding this Settlement Agreement including, but not limited to, those activities listed in Paragraph 33(a), and (ii) grant the right to enforce the land/water use restrictions referenced in Paragraph 33(b).

(ii) the Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (1) the United States, on behalf of EPA and BLM, and their representatives or (2) the State and its representatives. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State, as appropriate) is a "third-party beneficiary," allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

(iii) within 45 days of EPA's issuance of the Site Action Memorandum, submit to EPA for review and approval regarding such real property: (i) a draft Proprietary Control that is enforceable under state law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Respondents are unable to obtain release or subordination of such prior liens or encumbrances).

(iv) within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Control Recorder's Office of Summit County, State of Utah, pursuant to Utah Code Ann. §§ 57-25-101 et seq. Within 30 days of recording the Proprietary Control, such Respondents shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. §3111.

(d) BLM shall, with respect to the Silver Maple Claims portion of the Site that is in the custody and control of BLM, commencing on the Effective Date of this Settlement Agreement, provide EPA, Respondents, and the State, and their representatives, contractors, and

subcontractors, with access at all reasonable times to the Site to conduct any activity regarding this Settlement Agreement, as listed in subparagraph (a) of this paragraph.

34. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than any Respondent, Respondents shall use best efforts to secure from such persons:

(a) an agreement to provide access thereto for the EPA, BLM, and the State and Respondents, and their representatives, contractors and subcontractors, to conduct any activity required by this Settlement Agreement including, but not limited to, the activities listed in Paragraph 33(a);

(b) an agreement, enforceable by each Respondent and EPA, BLM and the State, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the response action. The agreement shall include, but not be limited to, the land/water use restrictions referenced in Paragraph 33(b); and

(c) (i) the execution and recordation in the Recorder's Office of Summit County, State of Utah, pursuant to Utah Code Ann. §§ 57-25-101 *et seq.* of Proprietary Controls, that (1) grant a right of access to conduct any activity regarding this Settlement Agreement including, but not limited to, those activities listed in Paragraph 33(a), and (2) grant the right to enforce the land/water use restrictions referenced in Paragraph 33(b).

(ii) the Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (1) EPA, BLM and their representatives, (2) the State and its representatives, (3) Respondents and their representatives, and/or (4) other appropriate grantees. The Proprietary Controls, other than those granted to the governments, shall include a designation that EPA (and/or the State as appropriate) is a "third party beneficiary," allowing EPA to maintain the right to enforce the Proprietary Control without acquiring an interest in real property. If any Proprietary Controls are granted to any Respondent pursuant to this Paragraph 34(c)(ii), then such Respondent shall monitor, maintain, report on, and enforce such Proprietary Controls.

(iii) within 45 days of EPA's issuance of the Site Action Memorandum, Respondent UPCM shall submit to EPA for review and approval regarding such property: (i) a draft Proprietary Control that is enforceable under state law; and (ii) a current title insurance commitment, or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances).

(iv) within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, Respondents shall update the title search and, if it is

determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, the Proprietary Control shall be recorded with the Recorder's Office of Summit County, State of Utah, pursuant to Utah Code Ann. §§ 57-25-101 et seq. Within 30 days of the recording of the Proprietary Control, Respondents shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

35. For purposes of Paragraphs 33 and 34, "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, a Proprietary Control, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within 60 days of the Effective Date, Respondents have not: (a) obtained agreements to provide access, restrict land/water use or record Proprietary Controls, as required by Paragraph 34(a), 34(b) or 34(c); or (b) obtained, pursuant to Paragraph 33(c)(i) or 34(c)(i), agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Respondents shall promptly notify the United States in writing', and shall include in that notification a summary of the steps that each Respondent has taken to attempt to comply with Paragraph 33 or 34. EPA may, as it deems appropriate, assist in obtaining access, agreements to restrict land/water use, Proprietary Controls, or the release or subordination of a prior lien or encumbrance. Respondents shall reimburse, as part of Future Response Costs, the United States under Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by EPA in obtaining such access, agreements to restrict land/water use, Proprietary Controls, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

36. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed, the Parties shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls. Respondents are prohibited from instituting any additional laws, regulations, ordinances, zoning restrictions, or other governmental controls affecting matters or property addressed by this Settlement Agreement.

37. Notwithstanding any provision of this Settlement Agreement, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, and any other applicable statute or regulations.

## SECTION XII

### EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a notice to the appropriate Respondent, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. Any disapproval or modification shall be consistent with the purposes set forth in Paragraph 9 (Statement of Purpose). However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work, would delay an emergency response, or where previous submission(s) have been disapproved due to Material Defects.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 36(a), (b), (c) or (e), the subject Respondent shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 36(c) and the submission had a Material Defect, EPA retains the right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

38. Resubmission. (a) Upon receipt of a notice of disapproval, the subject Respondent shall, within 15 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 15-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 36 and 37.

(b) Notwithstanding the receipt of a notice of disapproval, the subject Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve such Respondent of any liability for stipulated penalties under Section XX (Stipulated Penalties).

(c) EE/CA. (i) Each Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition or modification of the following deliverables: EE/CA Sampling and Analysis Plan, Draft Engineering Evaluation Report and Treatability Testing Work Plan and Draft Cost Analysis Report. While awaiting EPA approval, approval on condition or modification of these deliverables, Respondent shall

proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement.

(ii) For all remaining deliverables not listed above in subparagraph (c)(i), each Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the EE/CA or removal.

(d) *Removal Action.* Designation of the removal action deliverables that require a Respondent to halt any subsequent activities or tasks until receiving EPA approval, approval on condition or modification, shall be identified in the removal action Statement of Work and Work Plan.

39. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct a Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other deliverable. Such Respondent shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVIII (Dispute Resolution).

40. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a Material Defect, the subject Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless such Respondent invokes the dispute resolution procedures in accordance with Section XVIII (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVIII (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVIII, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

41. In the event that EPA takes over some of the EE/CA tasks, but not the preparation of the EE Report or the CA Report, the subject Respondent shall incorporate and integrate information supplied by EPA into the final reports. In conducting the Work, Respondents may rely on and incorporate data (including human health risk and ecological risk assessments) previously conducted by EPA; however, all such data shall conform to quality assurance requirements as set forth in the EE/CA Work Plan, the QAPP and guidance identified therein.

42. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

43. Neither failure of EPA to expressly approve or disapprove of a Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for a Respondent's deliverables, the Respondent is responsible for preparing deliverables acceptable to EPA.

### SECTION XIII

#### ACCESS TO INFORMATION

44. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. With the exception of confidential or privileged information described in paragraphs 45 and 46, below, EPA shall make all such information, upon request, available to the Parties.

45. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents. Respondents shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondents asserts business confidentiality claims.

46. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

47. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

engineering data, or any other documents or information evidencing conditions at or around the Site. However, Respondents agree not to use such data in ways prohibited in Paragraph 49.

48. In entering into this Settlement Agreement, Respondents waive any objections to any data gathered, generated, or evaluated by EPA or Parties in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the Settlement Agreement or any EPA-approved work plans or Sampling and Analysis Plans. If Respondents object to any other data, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the quarterly progress report containing the data.

49. No data, information, samples or materials generated during the course of or in relation to the response actions performed pursuant to this Settlement Agreement shall not be used by any Party for any purpose whatsoever, including any adversary proceeding, action, process, procedure or undertaking, whether formal, informal, administrative, municipal, judicial, or otherwise (whether in relation to the Site or otherwise), other than a proceeding to enforce the terms of this Settlement Agreement or a proceeding for injunctive relief for this Site pursuant to CERCLA Section 106. Respondents agree that they shall not use or attempt to use any data, information, samples or other materials generated or discovered pursuant to or in relation to this Settlement Agreement, or as a result of or in connection with any of the activities contemplated hereunder, to make any allegations or inferences involving, or to assert any claims against each other for, liability for environmental or contaminant issues at the Site or within either the Silver Creek watershed or the East Canyon Creek watershed. This prohibition shall include, by way of example and not by way of limitation, actions filed in a court of law, administrative or municipal undertakings or actions; representations made to federal, state or local government authorities; and statements made to the media or members of the general public.

#### SECTION XIV

##### RECORD RETENTION

49. During the pendency of this Settlement Agreement and for a minimum of 10 years after Respondents' receipt of EPA's notification pursuant to Section XXXI (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXXI (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

50. At the conclusion of this document retention period, Respondents shall notify EPA and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or the State, Respondents shall deliver any such records or documents to

EPA or the State. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA or the State with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

51. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## SECTION XV

### COMPLIANCE WITH OTHER LAWS

52. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent UPCM shall identify ARARs, subject to EPA approval, as part of the EE/CA.

## SECTION XVI

### EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

53. In the event of any action or occurrence during performance of Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Respondent performing the Work task shall immediately take all appropriate action. The Respondent performing the Work task shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. The Respondent performing the Work task shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, an On Scene Coordinator ("OSC") or



Curtis Kimbel, Emergency Response Unit, EPA Region 8 Preparedness, Assessment and Emergency Response Program, at 303-312-6108, and the Region 8 Emergency Response Spill Report Hotline, at 1-800-227-8914 of the incident or Site conditions. In the event that the Respondent performing the Work task fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, such Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Payment of Response Costs).

54. In addition, in the event of any release of a hazardous substance from the Site, the Respondent performing the Work task, as well as the Respondent that knows or should have known of the circumstance, shall immediately notify the EPA Project Coordinator, an OSC or the Regional Duty Officer at Region 8 Emergency Response Spill Report Hotline, at 1-800-227-8914 and the National Response Center at (800) 424-8802. Such Respondent(s) shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, et seq.

## SECTION XVII

### PAYMENT OF RESPONSE COSTS

73. *Payments of Future Response Costs.* (a) Each Respondent shall pay EPA Future Response Costs, not inconsistent with the NCP, pursuant to the following cost allocation. Respondent UPCM shall pay to EPA [% of] for Future Response Costs, except future Oversight Costs. Respondent Park City shall pay to EPA [% of] for Future Response Costs. On a periodic basis, EPA will send each Respondent a bill requiring payment that includes a Region 8 Cost Summary. Each Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 74 of this Settlement Agreement.

Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondent by EPA Region 8, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number 08-94, and the EPA docket number for this action.

(b) At the time of payment, Respondents shall send notice that payment has been made to:

Martha Walker  
Finance Program Manager  
Superfund Remedial Section, 8TMS-FMP  
US EPA, Region VIII,  
1595 Wynkoop Street

Denver, Colorado 80202

and to:

Maureen O'Reilly  
Superfund Enforcement  
U.S. EPA Region 8  
8ENF-RC  
1595 Wynkoop Street  
Denver, CO 80202

and by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), and to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

(c) The total amount to be paid by each Respondent pursuant to Subparagraph 73(a) shall be deposited in the Richardson Flat Tailings Site, Operable Unit #3, Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

74. If a Respondent does not pay Future Response Costs within 30 days of Respondent's receipt of a bill, such Respondent shall pay Interest on the unpaid balance of such Future Response Costs. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of such Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondents shall make all payments required by this Paragraph in the manner described in Paragraph 73.

75. A Respondent may contest payment of any Future Response Costs under Paragraph 73 if it determines that EPA has made an accounting error or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, such Respondent shall within the 30 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 73. Simultaneously, such Respondent shall establish an interest-bearing escrow account in a federally insured bank duly chartered in the State of Utah and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Such Respondent shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow

account including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, such Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, such Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 73. If such Respondent prevails concerning any aspect of the contested costs, such Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 73. Such Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding such Respondent's obligation to reimburse EPA for its Future Response Costs.

xx. Respondents shall share in the costs they each incur as follows: Respondent UPCM will pay to Respondent Park City 20% of all response costs incurred by Respondent Park City in performing EPA-approved work on OU#4, provided UPCM bears no direct or indirect cost or responsibility for any costs related to water or water treatment or water quality. Respondent Park City will pay to Respondent UPCM 10% of all response costs incurred by Respondent UPCM in performing EPA-approved work on OU#3.

## SECTION XVIII

### DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

60. If any Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 30 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The non-objecting Respondent shall also be given the option of participating in any formal negotiations. The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

61. Any agreement reached between EPA and any Respondent pursuant to this Section shall be in writing and shall, upon signature by EPA and both Respondents, be incorporated into and become an enforceable part of this Settlement Agreement. If EPA and Respondent are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be

tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

53. The following dispute resolution process pertains to all disputes between EPA and BLM regarding all EE/CA and removal action Work activities affecting the Silver Maple Claims portion of the Site.

54. EPA and BLM will cooperate to the fullest extent possible to ensure that the EE/CA is performed and that removal action Work activities, as selected in EPA's Action Memorandum (issued with the concurrence of BLM), is fully and completely implemented, as well as to maximize the use of the resources available for the successful completion of Operation and Maintenance activities. In the event of a disagreement between the Agencies, the Agencies agree to attempt to negotiate a mutually acceptable resolution of the issues to the fullest extent possible, as specified by the following provisions:

(i) EPA and BLM have coordinated their respective CERCLA response authorities at the Silver Maple Claims portion of the Site. EPA plans to issue a Site Action Memorandum under CERCLA authorities with the concurrence of BLM. If a dispute between EPA and BLM arises concerning any matter addressed under this Settlement Agreement, and the dispute cannot be resolved at the project manager/staff attorney level, the disputing party shall identify the dispute to the other party in writing. EPA and BLM shall have 14 days to resolve the dispute informally if possible. At the end of the 14-day informal dispute period, if the dispute is not resolved, the disputing party shall again state the dispute in writing in a letter addressed to the BLM Regional Director, and the Deputy Assistant Regional Administrator for Office of Enforcement, Compliance, and Environmental Justice ("EPA Deputy ARA"), EPA Region 8. The other party shall have 7 days to respond to this dispute letter. The BLM Regional Director and the EPA Deputy ARA shall then have 14 days to resolve the dispute. If, at the end of this 14-day period, the dispute cannot be resolved, all dispute letters and responses shall be forwarded to the Assistant Regional Administrator for Office of Enforcement, Compliance, and Environmental Justice ("EPA ARA"), EPA Region 8, and the BLM Associate Director. The EPA ARA and BLM Associate Director shall consult concerning the dispute and shall attempt to issue a joint decision regarding the issue within 14 days of receipt of the dispute letters. In the event the EPA ARA and BLM Associate Director are unable to issue a joint determination, the EPA ARA will issue a decision. The EPA ARA shall consider the BLM position in this matter in light of the BLM's responsibilities and authorities as the federal land management agency responsible for the management and stewardship of Silver Maple Claims. If unsatisfied with the decision of the EPA ARA, the BLM may initiate consultation with the Section Chief, Environmental Enforcement Section, US Department of Justice, regarding the EPA ARA decision. The EPA ARA will participate in that consultation process and consider the results of that consultation before making a final decision that will represent the final remedial action decision of the federal agencies. Any final decision reached pursuant to this paragraph shall not be subject to judicial review by any Party, including

the Agencies. The time periods listed herein may be increased or decreased by mutual agreement of the Agencies.

## SECTION XIX

### FORCE MAJEURE

62. Each Respondent agrees to perform all Work assumed by it, pursuant to the document attached as Appendix E, within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of the subject Respondent, or of any entity controlled by the subject Respondent, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite the subject Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

63. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, the subject Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within five days thereafter, the subject Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

64. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify the subject Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify the subject Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

## SECTION XX

### STIPULATED PENALTIES

65. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 66 and 67 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Paragraph (Stipulated Penalty Exception) or Section XIX (Force Majeure). "Compliance" by Respondents shall include completion of the Work responsibilities assumed pursuant to the document attached as Appendix E of this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, the EE/CA Work Plan, the removal action SOW and Work Plan, and any plans or other documents approved by EPA pursuant to this Settlement Agreement, and within the specified time schedules established by and approved under this Settlement Agreement.

66. Stipulated Penalty Amounts. (a) The following stipulated penalties shall accrue per day for failure to timely or adequately submit the following EE/CA deliverables: "Site Characterization Summary Report," "Identification and Analysis of Removal Action Alternatives," "Comparative Analysis of Removal Action Alternatives/Recommended Removal Action Alternative." The following stipulated penalties shall also accrue per day for failure, during implementation of removal response actions, to submit a timely or adequate: "Action Memo Work Plan," "Design Schedule Report" and "Design Summary Report."

#### PENALTY PER VIOLATION PER DAY

#### PERIOD OF NONCOMPLIANCE

\$ 250

1st through 14th day

\$ 1,000

15th through 30th day

\$37,500

31st day and beyond

(b) The following stipulated penalties shall accrue per day for failure to establish any required escrow account and failure to submit timely or adequate reports pursuant to the EE/CA Work Plan and the removal action SOW or Work Plan, where an extension for the report has not been granted in writing prior to the due date by EPA's Project Coordinator:

#### PENALTY PER VIOLATION PER DAY

#### PERIOD OF NONCOMPLIANCE

\$ 100

1st through 14th day

\$ 700

15th through 30th day

\$10,000

31st day and beyond

(c) The following stipulated penalties shall accrue per day for failure to submit timely or adequate quarterly progress reports: \$143 per violation, for the first week of noncompliance; \$500 per day, per violation, for the 8th through 14th day of noncompliance; \$710 per day, per violation, for the 15th day through the 30th day; and \$2,000 per day, per violation, for all violations lasting beyond 30 days.

61. In the event that EPA assumes performance of a portion or all of the Work required of a Respondent during performance of the EE/CA, pursuant to Paragraph 79 (Work Takeover) of Section XX (Reservation of Rights by EPA), that Respondent shall be liable for a stipulated penalty in the amount of \$50,000. In the event that EPA assumes performance of a portion or all of the Work assumed by a Respondent during performance of the removal action, pursuant to Paragraph 79 (Work Takeover) of Section XX (Reservation of Rights by EPA), that Respondent shall be liable for a penalty in an amount to be determined by at the discretion of EPA, but not to exceed \$100,000.

68. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Sections IX or X (EE/CA Work to be Performed, Performance of Removal), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the EPA Management Official designated in Paragraph 58 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

69. Following EPA's determination that a Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

64. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution). All payments to EPA under this Section shall indicate that the payment is for stipulated penalties, shall reference the EPA Region, the Site/Spill ID Number 08-94, the EPA Docket Number \_\_\_\_\_, the name and address of the party(ies) making payment, shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and shall be mailed to:

Regular mail:

Mellon Bank  
EPA Region VIII  
Attn: Superfund Accounting  
Post Office Box 360859  
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank  
3 Mellon Bank Center  
ROOM#153-2713  
Pittsburgh, Pennsylvania 15259

or other such address as EPA may designate in writing, or by wire transfer to:

ABA=021030004  
TREAS NYC/CTR/  
BNF=/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to:

Martha Walker  
Finance Program Manager  
Superfund Remedial Section, 8TMS-FMP  
US EPA, Region VIII,  
1595 Wynkoop Street  
Denver, Colorado 80202

and to:

Maureen O'Reilly  
Superfund Enforcement  
U.S. EPA Region 8  
8ENF-RC  
1595 Wynkoop Street  
Denver, CO 80202

65. At the time of payment, Respondent shall send notice that payment has been made by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), and to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

66. The payment of penalties shall not alter in any way a Respondent's obligation to complete performance of the Work required under this Settlement Agreement.



72. Penalties shall continue to accrue as provided in Paragraph 62 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

73. If a Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 52.

69. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). *Provided, however,* that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 79 (Work Takeover). Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

74. *Stipulated Penalty Exception.* Penalties shall apply, as set forth in this Section, in all circumstances related to the EE/CA and the removal action with the following specific exclusion. For a period of 30 days after EPA issues the Action Memorandum, no stipulated or statutory penalties shall accrue with respect to the decision, to be made by each Respondent, to implement the removal action Work. If a Respondent decides not to implement such work, EPA may void the Settlement Agreement as to that Respondent and: (1) issue a Unilateral Administrative Order pursuant to Section 106(a) of CERCLA against that Respondent; or (2) bring a claim in federal district court to enforce an injunction for performance of the removal action Work against that Respondent under this Settlement Agreement. In either instance, any Respondent that decides not to implement the work identified in the Action Memorandum shall not be subject to stipulated or statutory penalties under this Settlement Agreement for that decision and any related failures or delays. If EPA brings a claim to enforce a Respondent's performance of the removal action Work, EPA shall not seek, and shall be prohibited from seeking, stipulated or statutory penalties in that action. If EPA is successful in obtaining an injunction for performance of the removal action Work under this Settlement Agreement, EPA shall not impose, and shall be prohibited from imposing, stipulated or statutory penalties for past failures or delays, but shall be permitted to impose stipulated or statutory penalties for future failures or delays. A decision by any Respondent not to implement the work identified in the Action Memorandum shall not enable EPA to implement a Work Takeover (as defined in Paragraph 79) and shall not trigger the associated stipulated penalties identified in Paragraph 61

## SECTION XXI

### COVENANT NOT TO SUE BY EPA AND BLM

76. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA and BLM covenant not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Interim and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon, as to each individual Respondent, that Respondent's complete and satisfactory performance of all of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XVII. This covenant not to sue extends only to the qualifying Respondent and does not extend to any other person. EPA and BLM covenant not to sue or to take administrative action against the Utah Division of Parks and Recreation pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Interim and Future Response Costs.

## SECTION XXII

### RESERVATIONS OF RIGHTS BY EPA

77. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA, BLM or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA or BLM from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

78. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA and BLM reserve, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

(a) claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;

(b) liability for costs not included within the definition of Interim or Future Response Costs;

(c) liability for performance of response action other than the Work;

(d) criminal liability;

(e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(f) liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;

(g) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site; and

(h) claims based upon a failure to implement the removal action Work subsequent to a period of 30 days after EPA's issuance of the Site Action Memorandum.

79. *Work Takeover.* In the event EPA determines that a Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary ("*Work Takeover*"). However, EPA shall not be permitted to implement a Work Takeover in the instance that a Respondent decides not to conduct the removal action Work pursuant to paragraph 74 (*Stipulated Penalty Exclusion*). EPA shall issue a written notice ("*Work Takeover Notice*") to Respondent before a Work Takeover. Any Work Takeover Notice will specify the grounds upon which such notice was issued and will provide Respondent a period of 10 days within which to remedy the circumstances. If, after expiration of the 10-day notice period, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion of the Work as EPA deems necessary. In the event, however, that an emergency situation or immediate threat to public health or welfare or the environment exists, EPA will not issue a Work Takeover Notice to Respondent and may at any time assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that the Respondent responsible for performing such Work task shall pay pursuant to Section XVII (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

### SECTION XXIII

#### COVENANT NOT TO SUE BY RESPONDENTS

80. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Work, Interim or Future Response Costs, or this Settlement Agreement, including, but not limited to:

(a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

(b) any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

(c) any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, or Interim or Future Response Costs.

81. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

82. Respondents agree that they will not assert any claims and will waive all claims or causes of action that they may have against each other or against the Utah Division of Parks and Recreation relating to or stemming from releases of hazardous substances or discharges of pollutants from Prospector Square and OU#3. Respondents agree that they shall not make any allegations or assert any claims against each other for liability for environmental or contaminant issues at the Site or within either the Silver Creek watershed or the East Canyon Creek watershed, or anywhere tributary to the foregoing, including, by way of example and not by way of limitation, Empire Canyon, Empire Creek, Thayne's Canyon Creek, Judge Tunnel, Spiro Tunnel, and Prospector Drain. This prohibition shall include, by way of example and not by way of limitation, actions filed in a court of law, administrative or municipal undertakings or actions, representations made to federal, state or local government authorities, and statements made to the media or members of the general public.

## SECTION XXIV

### OTHER CLAIMS

84. By issuance of this Settlement Agreement, the United States, EPA and BLM assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States, EPA or BLM shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

85. Except as expressly provided in Section (Covenant Not to Sue by EPA and BLM), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including

but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

86. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## SECTION XXV

### CONTRIBUTION

87. (a) The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents and the Utah Division of Parks and Recreation are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may otherwise be provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Interim and Future Response Costs.

(b) The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents and the Utah Division of Parks and Recreation have, as of the Effective Date, resolved their liability to the United States for the Work and Interim and Future Response Costs.

(c) Except as provided in Section (Covenant Not to Sue by Respondent), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Nothing in this Settlement Agreement precludes the United States, the State or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

## SECTION XXVI

### INDEMNIFICATION

88. Each Respondent shall indemnify, save and hold harmless the United States, the State, their officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of such Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, each Respondent agrees to pay the United States all costs incurred by the United States, including but

not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of such Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States and the State shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States or the State.

89. The United States and the State shall give Respondents notice of any claim for which the United States or the State plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

90. Respondents waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, each Respondent shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between such Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

## **SECTION XXVII**

### **INSURANCE**

91. At least 30 days prior to commencing any on-Site work under this Settlement Agreement, each Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of 1 million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, each Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Each Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, each Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of each Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## SECTION XXVIII

### FINANCIAL ASSURANCE

92. (a) Within 30 days of the Effective Date, each Respondent shall establish and maintain financial security for the benefit of EPA. The amount for Respondent Park City shall be \$ [insert estimated cost of Work]. The amount for Respondent UPCM shall be \$ [insert estimated cost of Work]. The financial security shall be in one or more of the following forms, in order to secure the full and final completion of Work by each Respondent:

(i) a surety bond unconditionally guaranteeing payment and/or performance of the Work;

(ii) one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;

(iii) a trust fund administered by a trustee acceptable in all respects to EPA; and/or

(iv) a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work.

(b) Each Respondent shall provide a copy of its financial security mechanism, and any accompanying transmittal letter(s) to:

Daniela Golden  
Financial Analyst  
Superfund Remedial Section, 8ENF-RC  
US EPA, Region VIII,  
1595 Wynkoop Street  
Denver, Colorado 80202

93. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, the subject Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 92, above. In addition, if at any time EPA notifies a Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, such Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. A Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

95. If, after the Effective Date, a Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 92 of this Section, such Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by EPA and such Respondent, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Such Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, such Respondent may seek dispute resolution pursuant to Section XXVII (Dispute Resolution). Such Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

96. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, a Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

## **SECTION XXIX**

### **MODIFICATIONS**

97. The RPM may make modifications to any plan, schedule, work plan or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

98. If a Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 97.

99. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

## **SECTION XXX**

### **ADDITIONAL REMOVAL ACTION**

100. Subject to Respondents' right to elect not to perform the removal action Work identified in the Action Memorandum, and as set forth in paragraph 74 (*Stipulated Penalty*



Exception), if EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify the subject Respondent of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, such Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Sections IX and X (EE/CA Work to Be Performed, Performance of Removal) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Section XII, Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the RPM's authority to make oral modifications to any plan or schedule pursuant to Section XXIX (Modifications).

### SECTION XXXI

#### NOTICE OF COMPLETION OF WORK

101. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post-removal site controls, payment of Future Response Costs, or record retention, EPA will provide written notice to each Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify the Respondent performing the Work task pursuant to the document attached as Appendix E, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. The subject Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by the subject Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

### SECTION XXXIII

#### ADMINISTRATIVE RECORD

103. EPA will determine the contents of the administrative record file for selection of the removal action. Respondents shall submit to EPA documents developed during the course of the EE/CA upon which selection may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondents shall establish a community information repository at or near the Site, to house one copy of the administrative record.

## SECTION XXXIV

### INTEGRATION/APPENDICES

104. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A: Site Map

Appendix B: EE/CA Work Plan

Appendix C: Map of Prospector Square

Appendix D: Map of Silver Maple Claims and Middle Reach

Appendix E: Work Scenario

Appendix F: Repository Rules and Regulations

Appendix G: Map of Area to be Remediated using Asarco Funds

## SECTION XXXV

### EFFECTIVE DATE

105. This Settlement Agreement shall be effective the day upon which this Settlement Agreement has been signed by all three EPA officials[, by officials of BLM, and the State of Utah?].

The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

Agreed this       day of       , 2011.

FOR RESPONDENT PARK CITY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Title: \_\_\_\_\_

FOR RESPONDENT UPCM:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

By:

Date:

Title

State of Utah

By:

Date:

Title

Bureau of Land Management

It is so Ordered and Agreed this      day of      , 2011.

By:

Date:

Matthew Cohn, Supervisory Attorney  
Legal Enforcement Program  
U.S. Environmental Protection Agency, Region  
8  
1595 Wynkoop Street  
Denver, CO 80202-1129

By:

Date:

Kelcey Land, Acting Director  
KCRA & CERCLA Technical Enforcement  
Program  
U.S. Environmental Protection Agency, Region  
8  
1595 Wynkoop Street  
Denver, CO 80202-1129

By:

Date:

Bill Murray, Director  
Superfund Remedial Response Program  
U.S. Environmental Protection Agency, Region  
8  
1595 Wynkoop Street  
Denver, CO 80202-1129

EFFECTIVE DATE:

Document comparison by Workshare Professional on Tuesday, February 01, 2011  
12:47:51 PM

Input:	
Document 1 ID	C:/DV/everest/2944319_01_00_21880.doc
Description	C:/DV/everest/2944319_01_00_21880.doc
Document 2 ID	C:/DV/everest/2944319_02_05_21880.doc
Description	C:/DV/everest/2944319_02_05_21880.doc
Rendering set	Standard_Strike_Through

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Redline Summary:		
No.	Change	Text
1	Insertion	2944319.01.05.doc
2	Insertion	1940592
3-4	Change	"DRAFT -THIS DRAFT IS PROVIDED FOR" changed to "UNITED STATES"
5	Deletion	SETTLEMENT PURPOSES ONLY...AFTER NEGOTIATIONS.
6	Deletion	UNITED STATES...AGENCY REGION 8
7	Deletion	AND
8	Deletion	UNITED STATES BUREAU OF LAND MANAGEMENT

9	Deletion	IN THE MAHER OF:
10	Deletion	))
11	Deletion	ADMINISTRATIVE SETTLEMENT
12	Deletion	AGREEMENT AND ORDER ON
13	Deletion	)
14	Deletion	Park City Municipal...City Mines Company, )
15	Deletion	)
16	Insertion	ENVIRONMENTAL PROTECTION AGENCY
17	Insertion	REGION 8
18	Insertion	AND
19	Insertion	UNITED STATES BUREAU OF LAND MANAGEMENT
20	Insertion	IN THE MATTER OF:
21	Insertion	Richardson Flat Tailings Site
22	Insertion	Operable Unit #3
23	Insertion	Park City, Utah
24	Insertion	Park City Municipal Corporation and
25	Insertion	United Park City Mines Company,
26	Insertion	Respondents
27	Insertion	Proceeding Under Sections 104, 106(a),
28	Insertion	107 and 122 of the Comprehensive
29	Insertion	Environmental Response, Compensation,
30	Insertion	and Liability Act, as amended,
31	Insertion	42 U.S.C. §§ 9604, 9606(a), 9607 and 9622
32	Insertion	_____
33	Insertion	) ADMINISTRATIVE SETTLEMENT
34	Insertion	) AGREEMENT AND ORDER ON
35	Insertion	) CONSENT FOR EE/CA INVESTIGATION

36	Insertion	)	AND REMOVAL ACTION
37	Insertion	)	
38	Insertion	)	
39	Insertion	)	
40	Insertion	)	
41	Insertion	)	
42	Insertion	)	
43	Insertion	)	
44	Insertion	)	U.S. EPA Region VIII
45	Insertion	)	CERCLA Docket No. _____
46	Insertion	)	
47	Insertion	)	
48	Insertion	)	
49	Insertion	)	
50-52	Insertion	ii	
53	Insertion	i	
54	Insertion	TABLE OF CONTENTS	
55	Insertion	SECTION	HEADING PAGE
56	Insertion	SECTION I	JURISDICTION AND GENERAL PROVISIONS 1
57	Insertion	SECTION II	PARTIES BOUND 2
58	Insertion	SECTION III	STATEMENT OF PURPOSE 2
59	Insertion	SECTION IV	DEFINITIONS 3
60	Insertion	SECTION V	FINDINGS OF FACT 6
61	Insertion	SECTION VI	CONCLUSIONS OF...LAW AND DETERMINATIONS 8
62	Insertion	SECTION VII	SETTLEMENT AGREEMENT AND ORDER 9
63	Insertion	SECTION VIII	DESIGNATION...ON-SCENE COORDINATOR 10
64	Insertion	SECTION IX	EE/CA WORK TO BE PERFORMED 13
65	Insertion	SECTION X	PERFORMANCE OF REMOVAL 15



66	Insertion	SECTION XI SITE ACCESS...CONTROLS 19
67	Insertion	SECTION XII EPA APPROVAL...AND OTHER SUBMISSIONS 23
68	Insertion	SECTION XIII ACCESS TO INFORMATION 25
69	Insertion	SECTION XIV RECORD RETENTION 26
70	Insertion	SECTION XV COMPLIANCE WITH OTHER LAWS 27
71	Insertion	SECTION XVI EMERGENCY...OF RELEASES 27
72	Insertion	SECTION XVII PAYMENT OF RESPONSE COSTS 28
73	Insertion	SECTION XVIII DISPUTE RESOLUTION 30
74	Insertion	SECTION XIX FORCE MAJEURE 32
75	Insertion	SECTION XX STIPULATED PENALTIES 33
76	Insertion	SECTION XXI COVENANT NOT TO SUE BY EPA AND BLM 37
77	Insertion	SECTION XXII RESERVATIONS OF RIGHTS BY EPA 37
78	Change	"RESPONDENTS" changed to "SECTION XXIII COVENANT NOT TO SUE BY RESPONDENTS"
79-80	Change	"RESPONDENTS )" changed to "RESPONDENTS 38"
81	Insertion	SECTION XXIV OTHER CLAIMS 40
82	Insertion	SECTION XXV CONTRIBUTION 40
83	Insertion	SECTION XXVI INDEMNIFICATION 41
84	Insertion	SECTION XXVII INSURANCE 41
85	Insertion	SECTION XXVIII FINANCIAL ASSURANCE 42
86	Insertion	SECTION XXIX MODIFICATIONS 43
87	Insertion	SECTION XXX ADDITIONAL REMOVAL ACTION 44
88	Insertion	SECTION XXXI NOTICE OF COMPLETION OF WORK 44
89	Insertion	SECTION XXXIII ADMINISTRATIVE RECORD 44
90	Insertion	SECTION XXXIV INTEGRATION/APPENDICES 45
91	Insertion	SECTION XXXV EFFECTIVE DATE 45
92-94	Insertion	-42-
95	Deletion	Normal.dotm
96-97	Change	"I. JURISDICTION AND GENERAL

		PROVISIONS" changed to "SECTION I JURISDICTION AND GENERAL PROVISIONS"
98-99	Change	"Agreement and Order on..."("Settlement Agreement" changed to "Agreement and Order on..."("Settlement Agreement"
100-101	Change	"Settlement Agreement") is...into voluntarily by" changed to "Settlement Agreement") is...into voluntarily by"
102-103	Change	"United Park City Mines Company ("Respondents" changed to "United Park City Mines Company ("Respondents"
104-105	Change	"Respondents") and the United States Environmental" changed to "Respondents") and the United States Environmental"
106-107	Change	"Environmental Protection Agency ("EPA" changed to "Environmental Protection Agency ("EPA"
108-109	Change	"EPA"), the Bureau of Land Management" changed to "EPA"), the Bureau of Land Management"
110-111	Change	"the Bureau of Land Management ("BLM" changed to "the Bureau of Land Management ("BLM"
112-113	Change	"BLM"), and the State of Utah (collectively," changed to "BLM"), and the State of Utah (collectively,"
114	Change	"the State of Utah (collectively, "the" changed to "the State of Utah (collectively, the"
115	Change	"the Parties" changed to "the "Parties"
116-117	Change	"Parties")." changed to "Parties")."
118-119	Change	"Engineering Evaluation/Cost Analysis ("EE/CA" changed to "Engineering Evaluation/Cost Analysis ("EE/CA"
120-121	Change	"EE/CA") and non" changed to "EE/CA") and non"
122-123	Change	") and non-time critical removal action (" changed to ") and non-time critical removal action ("
124-125	Change	"time critical removal action ("removal action" changed to "time critical removal action ("removal action"
126-127	Change	"removal action") by" changed to "removal

		action”) by"
128	Change	") by Respondents at or in connection" changed to ") by each of the Respondents at or in connection"
129-130	Change	"Richardson Flat Tailings...generally located near" changed to "Richardson Flat Tailings...generally located near"
131-132	Change	"located near Park City, Utah (the "Site" changed to "located near Park City, Utah (the "Site"
133-134	Change	"Site"), depicted generally in blue on" changed to "Site"), depicted generally in blue on"
135	Change	"on the map attached as...and the reimbursement of" changed to "on the map attached as...and the reimbursement of"
136	Change	", and the reimbursement...future response costs" changed to ", and the reimbursement...future response costs"
137-138	Change	"incurred by EPA in...and removal action." changed to "incurred by EPA in...and removal action."
139-140	Change	"9606(a), 9607 and 9622, as amended ("CERCLA" changed to "9606(a), 9607 and 9622, as amended ("CERCLA"
141-142	Change	"CERCLA")." changed to "CERCLA")."
143-144	Change	"Regional Administrators...EPA Delegation Nos. 14" changed to "Regional Administrators...EPA Delegation Nos. 14"
145-146	Change	"1994, by EPA Delegation Nos. 14-14" changed to "1994, by EPA Delegation Nos. 14-14"
147-148	Change	"14-C and 14" changed to "14-C and 14"
149-150	Change	"C and 14-14" changed to "C and 14-14"
151-152	Change	"14-0. This authority was further redelegated" changed to "14-D. This authority was further redelegated"
153-154	Change	"redelegated by the...the Assistant Regional" changed to "redelegated by the...the Assistant Regional"
155-156	Change	"Remediation by EPA Delegation No. 14-14" changed to "Remediation by EPA Delegation No. 14-14"
157-158	Change	"14-C." changed to "14-C."
159-160	Change	"C. DOI delegation language?" changed to "C."

		DOI delegation language?"
161-162	Change	"accordance with Sections 104(b)(2) and 1220)(1)" changed to "accordance with Sections 104(b)(2) and 122(j)(1)"
163-164	Change	")(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and" changed to ")(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and"
165-166	Change	", 42 U.S.C. §§ 9604(b)(2) and 96220)(" changed to ", 42 U.S.C. §§ 9604(b)(2) and 9622(j)("
167-168	Change	")( I), on September 28, 2010, EPA formally" changed to ")(1), on September 28, 2010, EPA formally"
169-170	Change	"notified the United...and the Utah Department" changed to "notified the United...and the Utah Department"
171-172	Change	"Department of...of hazardous substances" changed to "Department of...of hazardous substances"
173-174	Change	"and State trusteeship at Operable Unit #3" changed to "and State trusteeship at Operable Units #3"
175	Change	"#3 of the Richardson Flat Tailings" changed to "#3 and #4 of the Richardson Flat Tailings"
176	Change	"an admission of any...do not admit, and retain" changed to "an admission of any...do not admit, and retain"
177	Change	"to controvert in any subsequent proceedings" changed to "to controvert in any...or proceedings"
178	Change	"proceedings, other than proceedings to implement" changed to "proceedings, whether...proceedings to implement"
179-180	Change	"Agreement, the validity...law, and determinations" changed to "Agreement, the validity...law, and determinations"
181	Change	"VI of this Settlement...agree to comply with" changed to "VI of this Settlement...agree to comply with"
182	Deletion	II. PARTIES BOUND
183	Insertion	5. The Parties/Respondent...and Prospector Drain.
184	Insertion	SECTION II

		PARTIES BOUND
185-186	Change	"shall not alter such...under this Settlement" changed to "shall not alter such...under this Settlement"
187-188	Change	"and comply with this Settlement Agreement." changed to "and comply with this Settlement Agreement."
189-190	Change	"of this Settlement...individually or jointly" changed to "of this Settlement...individually or jointly"
191-192	Change	"and conditions of this...execute and legally bind" changed to "and conditions of this...execute and legally bind"
193	Deletion	III. STATEMENT OF PURPOSE
194	Change	"" changed to "SECTION III STATEMENT OF PURPOSE"
195-196	Change	"9. In entering into this Settlement Agreement," changed to "9. In entering into this Settlement Agreement,"
197	Change	"Parties are: (a) to...extent of contamination" changed to "Parties are: (a) to...extent of contamination"
198	Change	"nature and extent of...to the public health," changed to "nature and extent of...to the public health,"
199	Change	"pollutants or...an Engineering" changed to "pollutants or...an Engineering"
200	Change	"set forth in the EE/CA...attached as Appendix B" changed to "set forth in the EE/CA...attached as Appendix B"
201	Change	"attached as Appendix B to...Agreement; (b)" changed to "attached as Appendix B...Agreement; (b)"
202-203	Change	"this Settlement...to identify and evaluate" changed to "this Settlement...to identify and evaluate"
204-205	Change	"and evaluate alternatives...mitigate or otherwise" changed to "and evaluate alternatives...mitigate or otherwise"
206-207	Change	"mitigate or otherwise...or threatened release" changed to "mitigate or otherwise...or threatened"

		release"
208	Change	"Site, by conducting a...set forth in" changed to "Site, by conducting a...set forth in"
209-210	Change	"specifically set forth in...attached as Appendix B" changed to "specifically set forth in...attached as Appendix B"
211	Change	"attached as Appendix B to...Agreement; (c)" changed to "attached as Appendix B...Agreement; (c)"
212-213	Change	"conduct all actions...to implement the non" changed to "conduct all actions...to implement the non"
214-215	Change	"the non-time critical removal action remedy" changed to "the non-time critical removal action remedy"
216-217	Change	"removal action remedy...EPA's Action Memorandum" changed to "removal action remedy...EPA's Action Memorandum"
218	Change	"s Action Memorandum, as...set forth in a removal" changed to "s Action Memorandum for...set forth in a removal"
219	Change	"Statement of Work and...Plan; and (d) to recover" changed to "Statement of Work and...site; and (d) to recover"
220-221	Change	"; and (d) to recover...by EPA with respect" changed to "; and (d) to recover...by EPA with respect"
222-223	Change	"assess Site conditions...necessary to select" changed to "assess Site conditions...necessary to select"
224-225	Change	"Contingency Plan, 40 C.F.R. Part 300 ("NCP" changed to "Contingency Plan, 40 C.F.R. Part 300 ("NCP"
226-227	Change	"NCP")." changed to "NCP")."
228	Deletion	IV. DEFINITIO S
229	Insertion	SECTION IV DEFINITIONS
230-231	Change	"II. Unless otherwise expressly provided" changed to "I1. Unless otherwise expressly provided"
232-233	Change	""Action Memorandum" changed to "(a) "Action Memorandum"

234-235	Change	"Action Memorandum" shall mean the EPA Site Action" changed to "Action Memorandum" shall mean the EPA Site Action"
236-237	Change	"EPA, with the concurrence of BLM regarding the" changed to "EPA, with the concurrence...BLM as it relates to the"
238	Change	"Site, at the conclusion of the EE/CA." changed to "Site, at the conclusion...for each operable unit."
239	Insertion	(a1) "Asarco Funds" ...in OU 2 and OU 3.
240-241	Change	""BLM" changed to "(b) "BLM"
242-243	Change	"BLM" shall mean the United States Bureau" changed to "BLM" shall mean the United States Bureau"
244-245	Change	""CERCLA" changed to "(b) "CERCLA"
246-247	Change	"CERCLA" shall mean the...Environmental" changed to "CERCLA" shall mean the...Environmental"
248-249	Change	""Day" changed to "(c) "Day"
250-251	Change	"Day" shall mean a calendar day." changed to "Day" shall mean a calendar day."
252-253	Change	""Development Waste" changed to "(d) "Development Waste"
254-255	Change	"Development Waste' shall mean all" changed to "Development Waste" shall mean all"
256	Change	"shall mean all soils contaminated" changed to "shall mean all contaminated"
257-258	Change	"contaminated by mining activities that" changed to "contaminated soils that"
259-260	Change	"that Respondent Park City...to dispose of, but which" changed to "that PCMC seeks to dispose of, but which"
261-262	Change	"Richardson Flat Superfund Site, OUs 1-4." changed to "Richardson Flat Superfund Site, OUs 1-4."
263	Insertion	4. [needs work]
264-265	Change	""Effective Date" changed to "(e) "Effective Date"
266-267	Change	"Effective Date" shall be the effective date of" changed to "Effective Date" shall be the effective date of"
268-269	Change	""EPA" changed to "(f) "EPA"

270-271	Change	"EPA" shall mean the United States Environmental" changed to "EPA" shall mean the United States Environmental"
272-273	Change	""Future Response Costs" changed to "(g) "Future Response Costs"
274-275	Change	"Future Response Costs"...all costs, including," changed to "Future Response Costs"...all costs, including,"
276	Change	"Settlement Agreement,...to, payroll costs," changed to "Settlement Agreement,...to, payroll costs,"
277-278	Change	"Substances and Disease Registry ("ATSDR" changed to "Substances and Disease Registry ("ATSDR"
279-280	Change	"ATSDR") costs, the costs incurred pursuant" changed to "ATSDR") costs, the costs incurred pursuant"
281	Change	"Paragraph 34 (costs and...monies paid to secure" changed to "Paragraph 34 (costs and...monies paid to secure"
282-283	Change	"secure access, including...Paragraph 53 (emergency" changed to "secure access, including...Paragraph 53 (emergency"
284-285	Change	""Institutional Controls" changed to "(h) "Institutional Controls"
286-287	Change	"Institutional Controls"...proprietary controls" changed to "Institutional Controls"...proprietary controls"
288-289	Change	"resource use to...with, or ensure the" changed to "resource use to...with, or ensure the"
290-291	Change	"j. "Interest" changed to "(i) "Interest"
292-293	Change	"Interest" shall mean interest at the rate" changed to "Interest" shall mean interest at the rate"
294-295	Change	"of the EPA Hazardous...by 26 U.S.C. § 9507," changed to "of the EPA Hazardous...by 26 U.S.C. § 9507,"
296-297	Change	"compounded annually on...year, in accordance with" changed to "compounded annually on...year, in accordance with"
298-299	Change	"with 42 U.S.C. § 9607(a)....of interest shall be the" changed to "with 42 U.S.C. § 9607(a)....of interest shall be the"



300-301	Change	"rate of interest shall be...at the time the interest" changed to "rate of interest shall be...at the time the interest"
302-303	Change	"k. "Interim Response Costs" changed to "(j) "Interim Response Costs"
304-305	Change	"Interim Response Costs"...all costs, including" changed to "Interim Response Costs"...all costs, including"
306	Change	"including direct and...costs, a) paid by the" changed to "including direct and...costs, (a) paid by the"
307-308	Change	"a) paid by the United...connection with the Site" changed to "a) paid by the United...connection with the Site"
309	Change	"definition] and the...prior to the Effective" changed to "definition] and the...prior to the Effective"
310-311	Change	"k. Prospector Square" changed to "(k) "Prospector Square"
312	Change	"Square shall mean that area identified" changed to "Square" shall mean that area identified"
313	Change	"attached as Appendix C, and that has or has" changed to "attached as Appendix C,...that has caused, or has"
314-315	Change	"or has the potential to, cause" changed to "or has the potential to, cause"
316	Change	"potential to, cause...substances to become" changed to "potential to, cause,...substances to become"
317-318	Change	"k." changed to "(k) "Material Defect"...mean [need to fill in]."
319	Deletion	.
320	Change	"Middle Reach" changed to "(l) "Middle Reach"
321-322	Change	"Middle Reach" shall mean that portion of the" changed to "Middle Reach" shall mean that portion of the"
323-324	Change	"Site, consisting of approximately 63 acres, that" changed to "Site, consisting of approximately 82 acres, that"
325-326	Change	"acres, that is near the...end of the Prospector" changed to "acres, that starts at the...end of the"

		Prospector"
327-328	Change	"development in Park City,...Maple Claims portion" changed to "development in Park City,...Maple Claims portion"
329	Change	"Maple Claims portion of the Site, and is" changed to "Maple Claims portion of...U. S Highway 40 and is"
330-331	Change	"and is depicted generally...on the map attached" changed to "and is depicted generally...on the map attached"
332-333	Change	"k. "National Contingency Plan" changed to "(m) "National Contingency Plan"
334-335	Change	"National Contingency Plan" or" changed to "National Contingency Plan" or"
336-337	Change	"or "NCP" changed to "or "NCP"
338-339	Change	"NCP" shall mean the National Oil and" changed to "NCP" shall mean the National Oil and"
340	Deletion	k. "Past Response Costs"...costs through such date.
341	Insertion	(n) "Non-Development...Development Waste above.
342	Insertion	(o) "Oversight Costs"... (Access to Information).
343-344	Change	"k. "Proprietary Controls" changed to "(o) "Proprietary Controls"
345-346	Change	"Proprietary Controls"...easements or covenants" changed to "Proprietary Controls"...easements or covenants"
347-348	Change	"m. "Paragraph" changed to "(p) "Paragraph"
349-350	Change	"Paragraph" shall mean a...of this Settlement" changed to "Paragraph" shall mean a...of this Settlement"
351-352	Change	"n. "Parties" changed to "(q) "Parties"
353-354	Change	"Parties" shall mean EPA," changed to "Parties" shall mean EPA,"
355-356	Change	"shall mean EPA, 8LM, the...of Utah and Respondents." changed to "shall mean EPA, BLM, the...of Utah and Respondents."
357-358	Change	"q. "Removal Action" changed to "(r) "Removal Action"
359-360	Change	"Removal Action" shall mean all actions" changed to "Removal Action" shall mean all actions"

361-362	Change	"shall mean all actions...to implement the non" changed to "shall mean all actions...to implement the non"
363-364	Change	"to implement the non-time critical removal action" changed to "to implement the non-time critical removal action"
365-366	Change	"time critical removal...remedy selected in EPA" changed to "time critical removal...remedies selected in EPA"
367-368	Change	"selected in EPA's Action...decision document" changed to "selected in EPA's Action...decision document"
369-370	Change	"decision document at the...set forth in a removal" changed to "decision document at the...set forth in a removal"
371	Change	"Statement of Work and Work Plan." changed to "Statement of Work and...operable unit."
372-373	Change	"q. "Respondents" changed to "(s) "Respondents"
374-375	Change	"Respondents" shall mean Park City Municipal" changed to "Respondents" shall mean Park City Municipal"
376-377	Change	"r. "" changed to "(t) "Repository" ...28-A-1-X and SS-27-B-X."
378	Change	"Section" changed to "(u) "Section"
379-380	Change	"Section" shall mean a portion of this Settlement" changed to "Section" shall mean a portion of this Settlement"
381-382	Change	"I. "Settlement Agreement" changed to "(v) "Settlement Agreement"
383-384	Change	"Settlement Agreement"...mean this Administrative" changed to "Settlement Agreement"...mean this Administrative"
385	Change	"Section XXXIV). In the...between this Settlement" changed to "Section XXXIV). In the...between this Settlement"
386-387	Change	"s. "Silver Maple Claims" changed to "(w) "Silver Maple Claims"
388-389	Change	"Silver Maple Claims"...mean that portion of the" changed to "Silver Maple Claims"...mean that portion of the"
390-391	Change	"acres of the most...that is near the eastern"

		changed to "acres of the most...that is near the eastern"
392	Change	"that is in the custody...managed by, the Bureau" changed to "that is in the custody...managed by, the Bureau"
393-394	Change	""Site" changed to "(x) "Site"
395-396	Change	"Site" shall mean the Richardson Flat" changed to "Site" shall mean the Richardson Flat"
397-398	Change	"#4, encompassing approximately 1010 acres" changed to "#4, encompassing approximately 487 acres"
399	Change	"acres located east of Park City and comprising" changed to "acres more or less...Park City and comprising"
400-401	Change	"east of Park City and...the Silver Creek, in" changed to "east of Park City and...the Silver Creek, in"
402-403	Change	"on the map attached as...shall also include any" changed to "on the map attached as...shall also include any"
404-405	Change	""State" changed to "(y) "State"
406-407	Change	"State" shall mean the Utah Department" changed to "State" shall mean the Utah Department"
408-409	Change	""Statement of Work" changed to "(z) "Statement of Work"
410-411	Change	"Statement of Work" or" changed to "Statement of Work" or"
412-413	Change	"or "SOW" changed to "or "SOW"
414-415	Change	"SOW" shall mean any EPA Statement of" changed to "SOW" shall mean any EPA Statement of"
416-417	Change	"developed after issuance...Site Action Memorandum" changed to "developed after issuance...s Site Action Memorandum"
418-419	Change	"s Site Action Memorandum to govern" changed to "s Site Action Memorandum that will govern"
420	Change	"govern implementation of the Site removal" changed to "govern the implementation of the Site removal"
421	Insertion	will be separate SOWs for...the SOW for OU3.]
422-423	Change	""Waste Material" changed to "(aa) "Waste

		Material"
424-425	Change	"Waste Material" shall mean" changed to "Waste Material" shall mean"
426-427	Change	"shall mean I) any" changed to "shall mean (1) any"
428-429	Change	") any "hazardous substance" changed to ") any "hazardous substance"
430-431	Change	"hazardous substance" under Section 101" changed to "hazardous substance" under Section 101"
432	Change	"CERCLA, 42 U.S.C. §...pollutant or contaminant" changed to "CERCLA, 42 U.S.C. §...pollutant or contaminant"
433-434	Change	""Work" changed to "(bb) "Work"
435-436	Change	"Work" shall mean all activities Respondents" changed to "Work" shall mean all activities Respondents"
437	Deletion	V. FINDINGS OF FACT
438	Insertion	SECTION V FINDINGS OF FACT
439-440	Change	"II. The Richardson Flat Tailings Superfund" changed to "11. The Richardson Flat Tailings Superfund"
441-442	Change	"Tailings Superfund Site,...approximately" changed to "Tailings Superfund Site,...approximately"
443	Deletion	encompasses approximately...inSummit
444	Change	"County, Utah, and is depicted generally" changed to "487 acres in multiple...is depicted generally"
445-446	Change	"is depicted generally in...attached as Appendix A." changed to "is depicted generally in...attached as Appendix A."
447-448	Change	"beginning at the southern...Site, are as follows:" changed to "beginning at the southern...Site, are as follows:"
449-450	Change	"Operable Unit #2, namely, parcels SS-28" changed to "Operable Unit #2, namely, parcels SS-28"
451-452	Change	"28-A" changed to "28-A"
453-454	Change	"A-1-X, SS" changed to "A-1-X, SS"

455-456	Change	"X, SS-27" changed to "X, SS-27"
457-458	Change	"27-B-X, and SS-28-I-X." changed to "27-B-X, SS-28-A-X located...of section 26 T 1S R 4E."
459-460	Change	"Richardson Flat Tailings...Unit #4, includes the" changed to "Richardson Flat Tailings...Unit #4, includes the"
461-462	Change	"any areas in close...described and necessary" changed to "any areas in close...described and necessary"
463	Change	"within the Park City...large quantities of ore" changed to "within the Park City...large quantities of ore"
464	Change	"1875 and 1967. These...tailings and mining" changed to "1875 and 1967. These...tailings and mining"
465-466	Change	"caused tailings and...be located in and along" changed to "caused tailings and...be located in and along"
467-468	Change	"in the State of Delaware...UPCM conducted various" changed to "in the State of Delaware...UPCM conducted various"
469-470	Change	"Respondent UPCM conducted...within the Park City" changed to "Respondent UPCM conducted...within the Park City"
471-472	Change	"Mining District until...980s. The predecessors" changed to "Mining District until...1979. The predecessors"
473-474	Change	"The predecessors-in" changed to "The predecessors-in"
475	Change	"in interest of Respondent UPCM also" changed to "in -interest of Respondent UPCM also"
476-477	Change	"interest of Respondent...operations in the area" changed to "interest of Respondent...operations in the area"
478-479	Change	"mining operations in the...since the late 1800s." changed to "mining operations in the...in the late 1800s."
480-481	Change	"the late 1800s. These...the mining of ore from" changed to "the late 1800s. These...the mining of ore from"
482	Change	"West mines, owned by Respondent." changed to "West mines, owned by Respondent"

483	Change	"EPA asserts that mining waste from" changed to "UPCMC. EPA asserts that mining waste from"
484-485	Change	"from these operations has...impacted portions of the" changed to "from these operations has...impacted portions of the"
486	Insertion	yy. Other milling...to be Orphan Shares.
487	Change	"Historic" changed to "xx. Historic"
488-489	Change	"Historic mining...occurred at Prospector" changed to "Historic processing...occurred at Prospector"
490-491	Change	"This is a historical dump...tons of mill tailings" changed to "This is a historical dump area for mill tailings"
492	Change	"mill tailings have come...along Silver Creek." changed to "mill tailings."
493	Change	"Vicinity mills, such as...Grasselli and Broadwater" changed to "Vicinity mills, such as...and Broadwater"
494-495	Change	"and Broadwater, performed...to Prospector Square." changed to "and Broadwater mills...now owned by DuPont. ]"
496	Change	"The Prospector Square area was developed" changed to "xx. The Prospector Square area was developed"
497-498	Change	"Prospector Square area...Park City Municipal" changed to "Prospector Square area...Park City Municipal"
499	Change	"Corporation (Park City) during the 1970s and" changed to "Corporation (Park City) during the late 1970s and"
500	Change	"1970s and 1980s, with dense commercial and" changed to "1970s and early 1980s, with dense commercial and"
501	Change	"development has been...of tailings material." changed to "development has been...atop tailings material."
502-503	Change	"material. The Prospector...shallow groundwater from" changed to "material. The Prospector...shallow groundwater from"
504	Change	"shallow groundwater from...of the developed area" changed to "shallow groundwater from...of the developed area"

505-506	Change	"portions of the developed... The drain's flow is" changed to "portions of the developed... The drain's flow is"
507	Change	"s flow is split" changed to "s flow is unevenly split"
508-509	Change	"split between a constructed treatment wetland" changed to "split between a constructed treatment wetland"
510	Change	"loading for metals, for...of the operation of" changed to "loading for metals, for...of the operation of"
511-512	Change	"ug/l; cadmium loading,...9.184 ug/l; zinc" changed to "ug/l; cadmium loading,...9.184 ug/l; zinc"
513-514	Change	"9.184 ug/l; zinc loading,...water from the wetlands" changed to "9.184 ug/l; zinc loading,...water from the wetlands"
515-516	Change	"Silver Creek, this...signi ficant source for" changed to "Silver Creek, this...a significant source for"
517-518	Change	"source for the metals contamination in the Creek." changed to "source for the metals contamination in the Creek."
519-520	Change	"15. Respondent Park City, a municipal corporation" changed to "15. Respondent Park City, a municipal corporation"
521-522	Change	"and existing under the laws of the State of" changed to "and existing under the laws of the State of"
523-524	Change	"State of Utall, has...activities associated" changed to "State of Utah, has...activities associated"
525-526	Change	"activities associated...and the collection of" changed to "activities associated...and the collection of"
527-528	Change	"and the collection of...water that ultimately" changed to "and the collection of ...water that ultimately"
529-530	Change	"discharges through a pipe...downgradient areas." changed to "discharges through a pipe...downgradient areas."
531	Insertion	15. The Bureau of Land...attached as Appendix



		D.
532	Insertion	15. The Middle Reach...as the Middle Reach.
533	Insertion	15a Several moderate to...to be Orphan Shares.
534	Insertion	16. The Site includes...Creek for fishing,
535	Insertion	17. Respondent Park City...the Prospector Drain.
536	Insertion	xx. Directly upgradient...# 2:07-cv-00642-BSJ).
537	Insertion	xx. In the broader Empire...EPA on October 16, 2009.
538	Insertion	15. The portion of Silver...and the environment.
539	Insertion	17. Depending on the...and ecosystems.
540	Insertion	18. Operable Units # 2,...Units #2, #3, or #4.
541	Insertion	xx. The Utah Division of...16 U.S.C. § 1247 et seq.
542	Insertion	SECTION VI  CONCLUSIONS OF LAW AND DETERMINATIONS
543	Insertion	12. Based on the Findings...EPA has determined that:
544	Insertion	(a) Richardson Flat...42 U.S.C. § 9601(9).
545	Insertion	(b) The contamination...42 U.S.C. § 9601(14).
546	Insertion	(c) The conditions...42 U.S.C. § 9601(22).
547	Insertion	(d) Each Respondent is a...42 U.S.C. § 9601(21).
548	Insertion	(e) Each Respondent is a...42 U.S.C. § 9607(a).
549	Insertion	(i) Respondent Park City...42 U.S.C. § 9607(a)(1).
550	Insertion	(ii) Respondents were the...42 U.S.C. § 9607(a)(2).
551	Insertion	(iii) Respondents...42 U.S.C. § 9607(a)(3).
552	Insertion	(g) The actions required...42 U.S.C. § 9622(a).
553	Insertion	(h) EPA has determined...Settlement Agreement.
554	Insertion	SECTION VII  SETTLEMENT AGREEMENT AND ORDER
555	Insertion	Based upon the foregoing...Settlement Agreement.
556	Change	"" changed to "SECTION VIII

		DESIGNATION...AND ON-SCENE COORDINATOR"
557	Insertion	28. EE/CA. All EE/CA...of qualified personnel.
558	Insertion	(a) Respondent UPCM has...EPA's disapproval.
559	Insertion	(b) Respondent UPCM has...Project Coordinator at:
560	Insertion	Kerry C. Gee
561	Insertion	Vice President
562	Insertion	United Park City Mines Co.
563	Insertion	Box 1450
564	Insertion	Park City, Utah 84060
565	Insertion	Office: 435-333-6601
566	Insertion	Cell: 801-694-0382
567	Insertion	(c) Within 30 days of the...initial notification.
568	Insertion	(d) Within 15 days of the...Settlement Agreement.
569	Insertion	13. Removal Action. All...of qualified personnel.
570	Insertion	(a) Respondent UPCM has...EPA's disapproval.
571	Insertion	(b) Respondent UPCM has...Project Coordinator at:
572	Insertion	Kerry C. Gee
573	Insertion	Vice President
574	Insertion	United Park City Mines Co.
575	Insertion	Box 1450
576	Insertion	Park City, Utah 84060
577	Insertion	Office: 435-333-6601
578	Insertion	Cell: 801-694-0382
579	Insertion	(c) Within 30 days of EPA...initial notification.
580	Insertion	(d) Within 15 days of EPA...Settlement Agreement.
581	Insertion	15. EPA has designated...Project Coordinator at:
582	Insertion	Kathryn Hernandez
583	Insertion	Remedial Project Manager

584	Insertion	Superfund Remedial Section, 8EPR-RA
585	Insertion	US EPA, Region VIII,
586	Insertion	1595 Wynkoop Street
587	Insertion	Denver, Colorado 80202
588	Insertion	17. EPA's Project...or delay of Work.
589	Insertion	17. EPA shall arrange for...action Work Plan.
590	Insertion	17. EPA, BLM and the...Settlement Agreement.
591	Insertion	18. EPA and Respondents...EPA's disapproval.
592	Insertion	SECTION IX EE/CA WORK TO BE PERFORMED
593	Insertion	19. Respondent Park City...Settlement Agreement.
594	Insertion	20. Upon receipt of the...Institutional Controls.
595	Insertion	21. Modification of the EE/CA Work Plan.
596	Insertion	(a) In the event of...as modified or amended.
597	Insertion	(b) EPA may determine...to complete an EE/CA.
598	Insertion	(c) Respondents shall...of the dispute.
599	Insertion	(d) Respondents shall...appropriate relief.
600	Insertion	(e) Nothing in this...actions at the Site.
601	Insertion	22. Meetings. ...at EPA's discretion.
602	Insertion	23. EE/CA Progress...problems or delays.
603	Insertion	24. Quality Assurance. ...as determined by EPA.
604	Insertion	25. Sampling. (a) All...state law or regulation.
605	Insertion	(b) Respondents shall...identified in the QAPP.
606	Insertion	xx. Respondents shall...in electronic form.
607	Insertion	xx. Each Respondent shall...record for the Site.
608	Change	"" changed to "SECTION X PERFORMANCE OF REMOVAL"
609	Insertion	26. Respondents shall...in this Section.
610	Insertion	26. Removal Action Work...Settlement Agreement.
611	Insertion	(b) EPA may approve,...Settlement Agreement.
612	Insertion	(c) Respondents shall not...to Paragraph 36(b).

613	Insertion	27. Removal Health and...of the removal action.
614	Insertion	28. Removal Quality...February 1998).
615	Insertion	(b) All sampling and...System requirements.
616	Insertion	(b) Upon request by EPA,...and/or analysis.
617	Insertion	(c) Upon request by EPA,...of the Work.
618	Insertion	29. Removal Reporting. ...or anticipated problems.
619	Insertion	(b) Each Party who owns...(Access to Information).
620	Insertion	31. Final Removal Report....of that report:
621	Insertion	"Under penalty of law, I...for knowing violations."
622	Insertion	32. Each Respondent shall...in electronic form.
623	Insertion	32. Off-Site Shipments. ...exceed 10 cubic yards.
624	Insertion	(i) Each Respondent shall...in another state.
625	Insertion	(ii) The identity of the...is actually shipped.
626	Insertion	(b) Before shipping any...the preceding sentence.
627	Insertion	xx. If the "Pace"...paid to Respondent UPCM.
628	Insertion	xx. The rules and...of, the repository,
629	Insertion	[xx. EPA will fund...G using Asarco funds.]
630	Change	"" changed to "SECTION XI SITE ACCESS...INSTITUTIONAL CONTROLS"
631	Insertion	33. If the Site, or any...Settlement Agreement:
632	Insertion	(a) such Respondent...following activities:
633	Insertion	(i) Monitoring the Work;
634	Insertion	(ii) Verifying any data...BLM, or the State;
635	Insertion	(iii) Conducting...at or near the Site;
636	Insertion	(iv) Obtaining samples;
637	Insertion	(v) Assessing the need...at or near the Site;
638	Insertion	(vi) Assessing...Assurance Project Plans;
639	Insertion	(vii) Implementing the...Settlement Agreement;
640	Insertion	(viii) Inspecting and...(Access to Information);
641	Insertion	(ix) Assessing...Settlement Agreement;
642	Insertion	(x) Determining whether...Agreement; and
643	Insertion	(xi) Implementing,...Institutional Controls.

644	Insertion	(b) commencing on the...Action Memorandum; and
645	Insertion	(c) such Respondents shall:
646	Insertion	(i) execute and record in...in Paragraph 33(b).
647	Insertion	(ii) the Proprietary...in real property.
648	Insertion	(iii) within 45 days of...liens or encumbrances).
649	Insertion	(iv) within 15 days of...by 40 U.S.C. §3111.
650	Insertion	(d) BLM shall, with...(a) of this paragraph.
651	Insertion	34. If the Site, or any...from such persons:
652	Insertion	(a) an agreement to...in Paragraph 33(a);
653	Insertion	(b) an agreement,...in Paragraph 33(b); and
654	Insertion	(c) (i) the execution and...in Paragraph 33(b).
655	Insertion	(ii) the Proprietary...Proprietary Controls.
656	Insertion	(iii) within 45 days of...liens or encumbrances).
657	Insertion	(iv) within 15 days of...by 40 U.S.C. § 3111.
658	Insertion	35. For purposes of...or just compensation.
659	Insertion	36. If EPA determines...Settlement Agreement.
660	Insertion	37. Notwithstanding any...statute or regulations.
661	Change	"" changed to "SECTION XII EPA APPROVAL...AND OTHER SUBMISSIONS"
662	Insertion	36. After review of any...due to Material Defects.
663	Insertion	37. In the event of...(Stipulated Penalties).
664	Insertion	38. Resubmission. (a)...in Paragraphs 36 and 37.
665	Insertion	(b) Notwithstanding the...(Stipulated Penalties).
666	Insertion	(c) EE/CA. (i) Each...Settlement Agreement.
667	Insertion	(ii) For all remaining...the EE/CA or removal.
668	Insertion	(d) Removal Action. ...of Work and Work Plan.
669	Insertion	39. If EPA disapproves a...(Dispute Resolution).
670	Insertion	40. If upon resubmission,...provided in Section XX.
671	Insertion	41. In the event that EPA...identified therein.

672	Insertion	42. All plans, reports,...Settlement Agreement.
673	Insertion	43. Neither failure of...acceptable to EPA.
674	Insertion	SECTION XIII ACCESS TO INFORMATION
675	Insertion	44. Respondents shall...to the Parties.
676	Insertion	45. Respondents may...confidentiality claims.
677	Insertion	46. Respondents may...they are privileged.
678	Insertion	47. No claim of...in Paragraph 49.
679	Insertion	48. In entering into this...containing the data.
680	Insertion	49. No data, information,...of the general public.
681	Insertion	SECTION XIV RECORD RETENTION
682	Insertion	49. During the pendency...performance of the Work.
683	Insertion	50. At the conclusion of...they are privileged.
684	Insertion	51. Each Respondent...RCRA, 42 U.S.C. § 6927.
685	Insertion	SECTION XV COMPLIANCE WITH OTHER LAWS
686	Insertion	52. Respondents shall...as part of the EE/CA.
687	Insertion	SECTION XVI EMERGENCY...NOTIFICATION OF RELEASES
688	Insertion	53. In the event of any...of Response Costs).
689	Insertion	54. In addition, in the...U.S.C. § 11004, et seq.
690	Insertion	SECTION XVII PAYMENT OF RESPONSE COSTS
691	Insertion	73. Payments of Future...Settlement Agreement.
692	Insertion	Payment shall be made to...number for this action.
693	Insertion	(b) At the time of...has been made to:
694	Insertion	Martha Walker
695	Insertion	Finance Program Manager
696	Insertion	Superfund Remedial Section, 8TMS-FMP

697	Insertion	US EPA, Region VIII,
698	Insertion	1595 Wynkoop Street
699	Insertion	Denver, Colorado 80202
700	Insertion	and to:
701	Insertion	Maureen O'Reilly
702	Insertion	Superfund Enforcement
703	Insertion	U.S. EPA Region 8
704	Insertion	8ENF-RC
705	Insertion	1595 Wynkoop Street
706	Insertion	Denver, CO 80202
707	Insertion	and by email to... and to:
708	Insertion	EPA Cincinnati Finance Office
709	Insertion	26 Martin Luther King Drive
710	Insertion	Cincinnati, Ohio 45268
711	Insertion	(c) The total amount to...Substance Superfund.
712	Insertion	74. If a Respondent does...in Paragraph 73.
713	Insertion	75. A Respondent may...Future Response Costs.
714	Insertion	xx. Respondents shall...approved work on OU#3.
715	Insertion	SECTION XVIII DISPUTE RESOLUTION
716	Insertion	59. Unless otherwise...and informally.
717	Insertion	60. If any Respondent...be confirmed in writing.
718	Insertion	61. Any agreement reached...whichever occurs.
719	Insertion	53. The following dispute...portion of the Site.
720	Insertion	54. EPA and BLM will...following provisions:
721	Insertion	(i) EPA and BLM have...of the Agencies.
722	Insertion	SECTION XIX FORCE MAJEURE
723	Insertion	62. Each Respondent...cost of performance.
724	Insertion	63. If any event occurs...caused by such failure.
725	Insertion	64. If EPA agrees that...the force majeure event.
726	Insertion	SECTION XX

		STIPULATED PENALTIES
727	Insertion	65. Respondents shall be...Settlement Agreement.
728	Insertion	66. Stipulated Penalty..."Design Summary Report."
729	Insertion	PENALTY PER VIOLATION PER DAY
730	Insertion	PERIOD OF NONCOMPLIANCE
731	Insertion	\$ 250
732	Insertion	1st through 14th day
733	Insertion	\$ 1,000
734	Insertion	15th through 30th day
735	Insertion	\$37,500
736	Insertion	31st day and beyond
737	Insertion	(b) The following...s Project Coordinator:
738	Insertion	PENALTY PER VIOLATION PER DAY
739	Insertion	PERIOD OF NONCOMPLIANCE
740	Insertion	\$ 100
741	Insertion	1st through 14th day
742	Insertion	\$ 700
743	Insertion	15th through 30th day
744	Insertion	\$10,000
745	Insertion	31st day and beyond
746	Insertion	(c) The following...lasting beyond 30 days.
747	Insertion	61. In the event that EPA...not to exceed \$100,000.
748	Insertion	68. All penalties shall...Settlement Agreement.
749	Insertion	69. Following EPA's...of a violation.
750	Insertion	64. All penalties...and shall be mailed to:
751	Insertion	Regular mail:
752	Insertion	Mellon Bank
753	Insertion	EPA Region VIII
754	Insertion	Attn: Superfund Accounting
755	Insertion	Post Office Box 360859
756	Insertion	Pittsburgh, Pennsylvania 15251-6859
757	Insertion	Express Mail:
758	Insertion	Mellon Bank



759	Insertion	3 Mellon Bank Center
760	Insertion	ROOM#153-2713
761	Insertion	Pittsburgh, Pennsylvania 15259
762	Insertion	or other such address as...or by wire transfer to:
763	Insertion	ABA=021030004
764	Insertion	TREAS NYC/CTR/
765	Insertion	BNF=/AC-68011008
766	Insertion	Wire transfers must be...Bank in New York.
767	Insertion	Copies of check(s) paid...shall be sent to:
768	Insertion	Martha Walker
769	Insertion	Finance Program Manager
770	Insertion	Superfund Remedial Section, 8TMS-FMP
771	Insertion	US EPA, Region VIII,
772	Insertion	1595 Wynkoop Street
773	Insertion	Denver, Colorado 80202
774	Insertion	and to:
775	Insertion	Maureen O'Reilly
776	Insertion	Superfund Enforcement
777	Insertion	U.S. EPA Region 8
778	Insertion	8ENF-RC
779	Insertion	1595 Wynkoop Street
780	Insertion	Denver, CO 80202
781	Insertion	65. At the time of... and to:
782	Insertion	EPA Cincinnati Finance Office
783	Insertion	26 Martin Luther King Drive
784	Insertion	Cincinnati, Ohio 45268
785	Insertion	66. The payment of...Settlement Agreement.
786	Insertion	72. Penalties shall...of EPA's decision.
787	Insertion	73. If a Respondent fails...to Paragraph 52.
788	Insertion	69. Nothing in this...Settlement Agreement.
789	Insertion	74. Stipulated Penalty...in Paragraph 61
790	Insertion	SECTION XXI  COVENANT NOT TO SUE BY EPA AND BLM
791	Insertion	76. In consideration of...Future Response Costs.
792	Insertion	SECTION XXII

		RESERVATIONS OF RIGHTS BY EPA
793	Insertion	77. Except as...other applicable law.
794	Insertion	78. The covenant not to...but not limited to:
795	Insertion	(a) claims based on a...Settlement Agreement;
796	Insertion	(b) liability for costs...Future Response Costs;
797	Insertion	(c) liability for...other than the Work;
798	Insertion	(d) criminal liability;
799	Insertion	(e) liability for damages...damage assessments;
800	Insertion	(f) liability arising...outside of the Site;
801	Insertion	(g) liability for costs...related to the Site; and
802	Insertion	(h) claims based upon a...Site Action Memorandum.
803	Insertion	79. Work Takeover. In...authorized by law.
804	Insertion	SECTION XXIII COVENANT NOT TO SUE BY RESPONDENTS
805	Insertion	80. Respondents covenant...but not limited to:
806	Insertion	(a) any direct or...other provision of law;
807	Insertion	(b) any claim arising out...or at common law; or
808	Insertion	(c) any claim against the...Future Response Costs.
809	Insertion	81. Nothing in this...40 C.F.R. § 300.700(d).
810	Insertion	82. Respondents agree...of the general public.
811	Change	"" changed to "SECTION XXIV OTHER CLAIMS"
812	Insertion	84. By issuance of this...Settlement Agreement.
813	Insertion	85. Except as expressly...U.S.C. §§ 9606 and 9607.
814	Insertion	86. No action or decision...42 U.S.C. § 9613(h).
815	Change	"" changed to "SECTION XXV CONTRIBUTION"
816	Insertion	87. (a) The Parties agree...Future Response Costs.
817	Insertion	(b) The Parties agree...Future Response Costs.

818	Insertion	(c) Except as provided in...to Section 113(£)(2).
819	Change	"" changed to "SECTION XXVI INDEMNIFICATION"
820	Insertion	88. Each Respondent shall...States or the State.
821	Insertion	89. The United States and...to settling such claim.
822	Insertion	90. Respondents waive all...of construction delays.
823	Change	"" changed to "SECTION XXVII INSURANCE"
824	Insertion	91. At least 30 days...or subcontractor.
825	Change	"" changed to "SECTION XXVIII FINANCIAL ASSURANCE"
826	Insertion	92. (a) Within 30 days of...Work by each Respondent:
827	Insertion	(i) a surety bond...performance of the Work;
828	Insertion	(ii) one or more...in all respects to EPA;
829	Insertion	(iii) a trust fund...respects to EPA; and/or
830	Insertion	(iv) a policy of...performance of the Work.
831	Insertion	(b) Each Respondent shall...letter(s) to:
832	Insertion	Daniela Golden
833	Insertion	Financial Analyst
834	Insertion	Superfund Remedial Section, 8ENF-RC
835	Insertion	US EPA, Region VIII,
836	Insertion	1595 Wynkoop Street
837	Insertion	Denver, Colorado 80202
838	Insertion	93. Any and all financial...Settlement Agreement.
839	Insertion	95. If, after the...resolving the dispute.
840	Insertion	96. Respondents may...resolving the dispute.
841	Change	"" changed to "SECTION XXIX MODIFICATIONS"
842	Insertion	97. The RPM may make...of the Parties.
843	Insertion	98. If a Respondent seeks...to Paragraph 97.

844	Insertion	99. No informal advice,...it is formally modified.
845	Insertion	SECTION XXX ADDITIONAL REMOVAL ACTION
846	Insertion	100. Subject to...XXIX (Modifications).
847	Insertion	SECTION XXXI NOTICE OF COMPLETION OF WORK
848	Insertion	101. When EPA determines,...Settlement Agreement.
849	Change	"" changed to "SECTION XXXIII ADMINISTRATIVE RECORD"
850	Insertion	103. EPA will determine...administrative record.
851	Insertion	SECTION XXXIV INTEGRATION/APPENDICES
852	Insertion	104. This Settlement...Settlement Agreement:
853	Insertion	Appendix A: Site Map
854	Insertion	Appendix B: EE/CA Work Plan
855	Insertion	Appendix C: Map of Prospector Square
856	Insertion	Appendix D: Map of Silver...Claims and Middle Reach
857	Insertion	Appendix E: Work Scenario
858	Insertion	Appendix F: Repository Rules and Regulations
859	Insertion	Appendix G: Map of Area...using Asarco Funds
860	Insertion	SECTION XXXV EFFECTIVE DATE
861	Insertion	105. This Settlement...and the State of Utah?].
862	Insertion	The undersigned...to this document.
863	Insertion	Agreed this ____ day of _____, 2011.
864	Insertion	FOR RESPONDENT PARK CITY
865	Insertion	By: Date: _____
866	Insertion	Title:
867	Insertion	FOR RESPONDENT UPCM:
868	Insertion	By: Date: _____
869	Insertion	Title:

870	Insertion	By:
871	Insertion	Date: _____
872	Insertion	Title
873	Insertion	State of Utah
874	Insertion	By:
875	Insertion	Date: _____
876	Insertion	Title
877	Insertion	Bureau of Land Management
878	Insertion	It is so Ordered and...of _____, 2011.
879	Insertion	By:
880	Insertion	Date: _____
881	Insertion	Matthew Cohn, Supervisory Attorney
882	Insertion	Legal Enforcement Program
883	Insertion	U.S. Environmental Protection Agency, Region 8
884	Insertion	1595 Wynkoop Street
885	Insertion	Denver, CO 80202-1129
886	Insertion	By:
887	Insertion	Date: _____
888	Insertion	Kelcey Land, Acting Director
889	Insertion	KCRA & CERCLA Technical Enforcement Program
890	Insertion	U.S. Environmental Protection Agency, Region 8
891	Insertion	1595 Wynkoop Street
892	Insertion	Denver, CO 80202-1129
893	Insertion	By:
894	Insertion	Date: _____
895	Insertion	Bill Murray, Director
896	Insertion	Superfund Remedial Response Program
897	Insertion	U.S. Environmental Protection Agency, Region 8
898	Insertion	1595 Wynkoop Street
899	Insertion	Denver, CO 80202-1129
900	Insertion	EFFECTIVE DATE:

Statistics:	
	Count
Insertions	691

Deletions	209
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	900